United States Court of Appeals for the Second Circuit



APPENDIX

74-2455

IN THE UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

19

RAPHAEL J. COSTANZO, Plaintiff-Appellant

VS.

Appeal Docket No. 74-2455

STANLEY ARRON, VISA THERM PRODUCTS, INC., ANNA ARRON, AND ANNA ARRON EXECUTRIX OF ESTATE OF MAX ARRON,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT.

Honorable Thomas F. Murphy (non-jury)

JOINT APPENDIX

Arthur T. Fattibene, Attorney for Plaintiff -Appellant 2480 Post Road Fairfield, Connecticut

To: Edward Kunin, Esq.
Attorney for Defendants-Appellees
285 Golden Hill Street
Bridgeport, Connecticut

Ernest Junkins, Esq.
Attorney for Defendants-Appellees
855 Main Street
Bridgeport, Connecticut

PAGINATION AS IN ORIGINAL COPY

IN THE UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

RAPHAEL J. COSTANZO, Plaintiff-Appellant

vs.

Appeal Docket No. 74-2455

STANLEY ARRON, VISA THEREM PRODUCTS, INC., ANNA ARRON, AND ANNA ARRON EXECUTRIX OF ESTATE OF MAX ARRON,

Defendants-Appellees.

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CIVIL DOCKET

ROBERT C. LAMPIEC

(1)

UNITED STATES DISTRICT COURT

Jury demand date: 5/26/67 by Plaintiffs 10/15/70 by Plaintiffs

C. FORM NO. 106 REV.	(.	Jury Tri	al Wa	rived see St	ipula	at 1or		
TITLE OF	CASE				ATTOR	NEYS	Oct.	. 30, 197
			For	plaintiff:				
TIMELY PRODUCT RAPHAEL J. COS ENJAMIN M. HINES and L Liendants on the	OIS D. HINES, O		Arth 137- Brid	hur T. Fatti -Elm-Street dgeport,-Gon	24::	6603	-	ond
ounterclaim	_ V ,		Fair	rfield, Conr	1. 0	6430		
STANLEY ARRON, -BARBARA-GHERVE VISA-THERM PRO MAX ARRON and	PATRICIA SULZ NAK and DUCTS, INC. ANNA ARRON	YSK I,						
				defendant:				
			Glads 171 (ence B. Schr stone & Schr Golden Hill geport, Conr	Wartz Stre	et)	elen	
	285 Cold	en шill S	Bridg Erne	rd F. Kunin Main:Street: geport, Cons est M. Junki Main Street dgeport, Con	n. Ω6) x £Q3 x) (Defe 0500	ndants. 04 ley Arron
STATIS* CAL RECORD	COSTS		1967	NAME OR RECEIPT NO.	RE	c.		DISB.
J.S. 5 mailed	Clerk			Arthur T. Fattibene	15	00	-	
I.S. 6 maileo	Marshal		CONTRACTOR THAT AND ADDRESS OF THE PARTY.	G.F. 102411			15.	50
			1974					
Basis of Action: Patent In-	Docket fee		11/4	Arthur T.	5	00		
ringe ent, Misappropria ion, Breach of Confi-	Witness fees			Fattibene				
ential disclosure and	Wiches Ices			(appeal) R.J. Costan	70			
Action-arose at: Unfair Com-	Depositions		11/5	Deposit:				
etition. Injunction,			"	G.F.100869			15	00
ccounting, Damages &			11/11	Edw.F.Kunin		-		
osts.	1			Appea1	5	00		

1967	PROCEEDINGS	[
3/16	Complaint filed Summers	Ju
	same and of complaint, handed to the Marshal for service. Form AO 120 mailed Commissioner of Patents.	1
	FORM AD 170 modiled on the service.	
3/30	Appearance of Lawrence B. Schwartz of Cladet Complaint.	
3/31	Appearance of Law ance P Columnons & Complaint.	
7.755	lentered for all Defendants	
4/13	Amended Complaint	
	filed in accordance with agreement with Attorney for Defendant Stanley Arron, and dropping defendants Barbara Companies Barbara Barbara Companies Barbara Ba	
	Stanley Arron and dropping to the standard	
	Sulzyski as improper participal barbara Chervenak and Patricia	
	copies of same and of Amandad of Indiana Logether with	
4/24	service on Max and Appa Arras	
4/.24	We'negi's return abouting briving filed - A	
5/5	Summons. Summons.	
51.5	Stipulation filed the	
	Stipulation filed that parties agree to an extension of time, until May 19, 1967, for filing the Answer. Ordered Accordingly.	
5/20	That I, C. M-5/5/6/ Copies mailed by the Conditionally.	
5/22 5/26	Answer and Country 1: City actions and Schwartz	
	Demand for Jury Trial filed by Plaints.	
6/5	Demand for Jury Trial, filed by Plaintiffs. Reply to Defendants Counterclaims, filed. Interrogatories to Defendants Counterclaims, filed.	
6/19		
	Placed on Trial List Stanley Arron, filed by Plaintiff	
19		
	Motion, Memorandum in Support of Motion, and Affidavit of Arthur T.	
	ractibene, filled by Plaintiff	
/16	Answers to Interrogetania	
/13	Products, Inc. Products, filed by defendant Visa-Therm	
13		
718	Alexander Sale Corporation, on Sept. 29, 1967, filed by Plaintiffs.	
TO	Plaintiffs Motion for Default Judgment Against Defendant Stanley Arron, "Off, without prejudice!" BEREWA	
1/00	Stanley Arron, "Off. without projudice / to Renew Ballist Delendant	
9/20	by Plaintiffs. Interrogatories to Defendant Stanley Arron (Second Set) filed	
10	by Plaintiffs. (Second Set) filed	
/9	Notice To Take Deposition, of Mr. E. A. Piller, on oral examination, on October 27, 1967, filed by Pl.	
150	examination, on October 27, 1967, filed by Plaintiffs.	
/16	Answer to Interrogatories, filed by Plaintiffs. Ind., and as President of Visa-Therm Products, Inc. Interrogatories to Defendants Stanley.	
/24	ind., and as President of Visa-Therm Products Ind., Stanley Arron,	
124	Products, Inc. (Third Set), filed by Plaintiff on & Vista-Therm	
/24	Products, Inc. (Third Set), filed by Plaintiffs. Motion for an Order for the Production & Vista-Therm	
124	Motion for an Order for the Production of	
	Motion for an Order for the Production of Documents Pursuant filed by Plaintiffs. to Rule 34, Notice of Motion and Memorandum in Support thereof,	
2/1	Tited by Plaintiffe	
	ADDEARANCE Of Edward E v	
/1	Arron, Max Arron, Anna Arron and Visa-Therm Products, Inc.	
(1	Objections To Plaintiffs' Interrogatories, and Notice of	
1/30	Motion, filed by Defendants. Interrogatories, and Notice of	
1,30	Notice To Take Deposition, on oral examination, of Defendant, Max Arron, on December 15, 1967, filed by Plaintiffs. Hearing on Plaintiffs' Motion For As Oral	
14	max Arron, on December 15, 1967, filed by Plaintiffe	
/4	Hearing on Plaintiffs' Motion For An Order For the Production	
	of Documents Pursuant to Rule 34 of F.R.C.P. Endorsement entered	
	on calendar as follows. Us.	
	INO ODE THE TAX II TO THE TAX IN UNIT IIID TODY ONE TO TO TO THE	
II	Notice of Motion, with attached Akery	
	The state of the s	
, s	Notice of Motion, with attached Affidavits of Lawrence B. Schwartz, and Max Arron, filed by Defendants. Defendants, Max Arron & Anna Arron Motion for Summary Judgment;	

(3) TIMELY PRODUCTS CORPORATION and RAPHAEL J. COSTANZO V.

TE	STANLEY ARRON, VISA-THERM PRODUCTS, INC., MAX ARRON and ANNA ARRON	1
8	PROCEEDINGS	Date Order of
	Memorandum In Support Of Defendants, Max Arron and Anna Arron's	
	The summer of summer of the su	
?		
	Memorandum in Opposition to (1) Defendants Motion Objecting	1
	to Plaintiffs' Interrogatories, and (2) Defendants' Motion Objecting tective Order Pursuant to Rule 30(b) of the Rule 10 Pro-	!
	tective Order Pursuant to Rule 30(b) of the F.R.C.P., filed by	
	Memorandum In Opposition To Defendants Motion For An Order	
		·
	of Documents Pursuant to Rule 34 F.R.C.P.; (2) Defendants' Objections to Plaintiffs' Interrogatories: (3) Motion Posterior	
	to Plaintiffs' Interrogatories; (3) Motion Pursuant to Rule 30(b)	
	for Order Vacating Motice to take Deposition; (4) Defendants' (Max	
	as follows: (1) "Par A R C F C H I To Judgment. The Court ruled	
	Without objection: Par Della Objection is ordered	
	struct Atty Fattibene not to disclose the contents of those documents	
	or records to anyone else, without Court's approval; Par. I - Object	-
	overruled - limited to models, samples & correspondence" Zampano, J.	on
	4-1/10/06 (2) Court will take the matter on the papers. Zampano, J. 4-1/10/06 (3) "Motion depied - deposition on the papers. Zampano, J.	
	H-1/16/60 (3) "Motion denied - deposition to be taken in Bridgeport.	" Zampan
	i-1/16/20 (4) "Off - with leave to renew." Zampano, J. 1-1/16/20 Interrogatories to Plaintiffs, filed by Posentiate, to the leave to renew.	.1.
_	with box containing Defendant's Interrogatory belief	
_	Memorandum Order On Defendants Objections To Interrogatories,	
_		
-		:
-	158 159 162 162 167 167 are sustained: Nos, 8145, 150, 152, 157.	
_	following interrogatories are sustained: Nos 145, 150, 152, 157, 158, 159, 163, 164, 165, 168, 172A, 174, 182/192, 196 and 198.	
	(2 Objections to the following interrogatories are overruled:	
	information is within defendants knowledge 162 166 (if such	
	175, 176, 178, 179, 180, 181, 183, 187, 188, 189, 190, and 190(h)	
	Nos. 140, 141, 142, 144, 146, 153, 154, 155, 156, 160 (if such information is within defendants' knowledge), 162, 166, 169, 170, 175, 176, 178, 179, 180, 181, 183, 187, 188, 189, 190 and 199(h). Schwartz, and Kunin.	
_	Schwartz, and Kunin.	
_	In Support of Their Motion Objection Theory, with Memorandum	
	In Support of Their Motion Objecting to Defendants' Interrogatory, And Notice of Motion, filed by Plaintiffs.	
	Answers To Defendants' Interrogatories, filed by Plaintiffs.	
	Answers to Interrogatories, filed by defendant Stanley Arron.	
	and Depusition of Defendant	
-	AMA PALVIII OII FIGICII O. 1900. Tiled by Disintiffs	
	MULLUII FUL DUIIMATY INCOMENT ON the Close of Detect To	
-	and Notice of Motion, with Memorandum In Support of Defendant's Motion	1
	For Summary Judgment On The Claim Of Patent Infringement, and Affidays of Stanley Arron, Derendant, with Exhibits A thru H, filed by	Lt
	De Cilualità.	1
	Motion For An Order, Pursuant to Rule 60, and Notice of Motion,	
	Translation of the state of the	
-	Reply Memorandum, filed by Plaintiff. Reply Memorandum, filed by Defendant.	
	Interrogatory 5 to Whether 66	
-	Interrogatory 5 to Plaintiff, filed by Defendant,	(OVER)

1968	PROCEEDINGS	Jud
4/6	Motion For An Order for production and inspection and/or Copying	
	and/or photo/production, etc., and Notice of Motion, filed by	
	Defendants.	
1/13	Interrogatories To Plaintiffs, filed by Defendants.	<u></u>
113	Memorandum In Opposition To Defendants' Motion For Production Brought Pursuant to Rule 34, filed by Plaintiffs.	
4/15		
	Rule 60; (2) Defendants' Motion for an Order for Production and	
	Inspection of Certain Documents. The following is agreed to and	-
	Dut on the record re Motion (i): Motion is granted to the extent	
	that the Court lifts the ban on the Applications. These application may be given to Atty Fattibene so that he may have the opportunity	S
	may be given to Atty Fattibene so that he may have the opportunity	
	to discuss them with his client, Mr. Costanza, and his expert, only	
	for the purpose of preparing moving papers in opposition to the	
	Motion for Summary Judgment, for the purpose of preparing deposition and for the purpose of presenting his case at trial. Court will	5,
	allow the defendant to draw an appropriate order embodying the limi-	
	tations of this order beyond which the Court has mentioned so as to	
	protect the defendants fully. After recess, counsel report to the	
	court that the order put on the record shall stand and no formal	
	order will be submitted. Motion (2) Granted. Zampano, J. M-4/16/6	8
	Defendant's (Stanley Arron) Motion for Summary Judgment on the Claim of Patent Infringement "Over to 5/6/68." (See Courtroom Minutes	
	of April 15, 1968) Copies of Courtroom Minutes mailed to all counse	1
4/19	Answer to Detendant's Interrogatory No. 5, 111ed by Plaintiff.	
11 .	Endorsement entered on Motion for an Order for Production and/or	-
	Copying, etc. under Rule 34, as follows: Motion granted, absent	
	objection." Zampano, J. 11-4/19/68. Copies mailed to Attorneys	
4/24	Fattibene, Schwartz and Kunin. Appearance of Ernest M. Junkins entered for Defendant, Stanley	
	Arron, et al.	
4/29	FourthSet Of Interrogatories, to Defendant, filed by Plaintitt.	
5/4	FourthSet Of Interrogatories, to Defendant, filed by Plaintif:. Memorandum In Opposition To Defendants Motion For Partial	
5/6	Summary Judgment As To The Patent Infringement Count, with	
5/6	Affidavit of Dennis J. Murphy for Plaintiffs, filed by Plaintiffs Affidavit of Stanley Arron, filed by Defendants.	
711	Defendant's Reply Memorandum, filed.	
11	Affidavit of Ernest M. Junkins, filed by Defendants.	
"	Affidavit of Raphael J. Costanza, filed by Plaintiffs.	11
#-	Report by Plaintiff, filed. Hearing on Defendant's (Stanley Arron) Motion for Summary Judgment	
	Hearing on Defendant's (Stanley Arron) Motion for Summary Judgment	
· · · · · ·	on Claim of Patent Infringement. Defendant's Exhibits E, K and L, filed. Decision Reserved. Zampano, J. M-5/7/68	
5/7	Motion Pursuant to Rule 32. F.R.C.P. Objecting to Defondants	
	Motion Pursuant to Rule 32, F.R.C.P., Objecting to Defondants Interrogatories Nos. 8, 10, 11, 13, 14, 15, 19, 20, 21, 22, 23, 23,	
	20, 30, 32 and 33, and Motice of Motion, filed by Plaintiffs.	
5/27	Court Reporter's Transcript of Proceedings of May 6, 1968, filed.	
E /00	Russell, R.	
5/28	Plaintiff's Memorandum in Support of Their Motion, filed.	
5/31	Memorandum in Opposition to Plaintiffs' Motion to Strike Defendant	8 '
6/3	Hearing on Plaintiff's Objections to Defendants' Interrogatories	
	"Objections to 8,10,11,15,19,20,23,32,33(a),33(b),33(c) - overruled	
	Interrogatories, filed by Defendants. Hearing on Plaintiff's Objections to Defendants' Interrogatories. "Objections to 8,10,11,15,19,20,23,32,33(a),33(b),33(c) - overruled. Objections to 21,24-30, 33(d) 33(e) sustained without prejudice to	
	defendant to renew motion." Zempano, J. M-5/7/68 Copies mailed to	
	(Cont'd."	,

(5)

168	PROCEEDINGS	Judgment Noted
/5	all counsel.	764
	Plaintiffs' Fifth Set of Interrogatories to Defendants,	
/25	Deposition of Emanual A. Dillar City	
6/27	Deposition of Fmanuel A. Piller, filed. Answers To FourthSet of Plaintiffs Interrogatories, filed	
	- The section of the	
8/1	Order Denving Defendants' Motion For Bordel Com	
	TAMARINETTE CITETED. OKDERKED That the detendented mention	
	Judgmette Itt Liter lavor be, and the came hereby to destail	The state of the s
	Kunin and Junkins. Copies mailed to Attorneys Fattibene, Schwartz	z.
8/14	Motion For an order for production and described	
	1 - P 1 - M WIND OF PHOLOGUELION OF ANY SOMEON OF THE PROPERTY	
75.0	documents, and Notice of Motion, filed by Defendants	
9/12	court Reporter's Transcript of Proceedings of June 3 1968	
"	filed. Russell, R.	
	Memorandum In Opposition To Defendants' Motion For Production Under Rule 34 Of FRCP, filed by Plaintiffs	
"	Under Rule 34 Of FRCP, filed by Plaintiffs. Court Reporter's Notes of Proceedings of June 3, 1968, filed. Russell R	
/16	Hearing on Defendants' Motion For Production And Inspection.	
	Littoria emetit entered on morion as follows. "I Objection to	
-	2. Objections to paragraphs 10(d) 10(e) and 11(e)	And the second second
	La requests in remaining paragraphs granted " Zampano I w off Tich	
	Land to ALLOTHEVS PALLIDENE Schupets Vinin and Timber	•
9/23	included to Add all Additional Counterclaim Notice of Water	
9/27		
12	Memorandum In Support of Their Metice of Motion, and	
	by Plaintiffs, with Affidavit of Arthur T. Fattibene.	
10/7	(1) Defendants' Motion to Amend its Answer: and (2) Plaintiffs'	
0/10	(1) Defendants' Motion to Amend its Answer; and (2) Plaintiffs' Motion for Default Judgment "Over by agreement." Zampano, J. N. 10/7/Answers To Fifth Set Of Plaintiffs' Interrogatories, filed	169
17.70	by Defendants.	00
0/10		
	Notice Of Motion, to enjoin plaintiff, Raphael J. Costanzo, from proceeding with an action now pending in U.S. District Court,	
	Eastern District, New York, and enjoining plaintiffs from bringing	
	eastern District, New York, and enjoining plaintiffs from bringing any further action against any customer of defendant Visa-Therm	
	Products, Inc., with Memorandum of Law thereon, (and open of Complaint in case now pending in U.S. Distr.Ct., New York) filed affendants.	t
0/18	Memorandum In Opposition To Description To Descript	
	Memorandum In Opposition To Defendant Motion aying Plaintiff's Costanzo suit against Hygrade, filed by antiffs.	
"	Tremotandem in Opposition to Defendants' Motion To Amond	
2/22	Auswer. Illed by Plainfifts	
0/21	Hearing on Defendants' Motion for Interestion and the Miles	
	Motion for injunction to granted Proposed	
	Order to be submitted." Zampano, J. M-10/23/68 Copies mailed to	
77	Defendants' Motion for an Order Enjoining Platatiff	
	Dittibility fullified ACLION against any fuetomer of the Defendant	
	Tampana T	
0/29	17-10/23/00	
1	Court Reporter's Transcript of Proceedings of April 15, 1968, filed. Malloy, R.	
	filed. Malloy, R.	

1968	PROCEEDINGS	Judgme
10/30	Notice of Settlement of Order, filed by Plaintiffs.	
"	Order entered (1) that Plaintiff Costanzo's action a ainst	1
	My rade Cutlery Co., pending in the U.S. District Court for the	-
	Eastern District of New York is stayed pending the completion of	-
	the trial of the action now pending before this Court subject how-	1
	ever to said stay being lifted in the event Hygrade Cutlery Co	
	shall mare, use or sell alleged infringing low-voltage battery	-
	heated socks, etc.: (2) that defendants' motion to further enjoin	
	riaintills from instituting any further actions of infrin ement	
	or Plaintiffs U.S. Letters Patent No. 3.293.405 against any customer	S
	or visa Therm Products, Inc. is permitted to go off without prejudic	e;
	(3) Plaintiffs' right to institute any further action for nation	
	intringement of said Letters Patent 3, 293, 405 against any customers	
	of the Defendants shall be subject to Plaintiffs living Defendante!	
	counsel thirty (30) days written notice of any such intention, and said notice shall include the name of any customer against which	
	Such action is contemplated. Defendants after receipt of said	
	notice, may if they so desire on notice, renew their motion at which	
	the the Court shall then rules as to whether or not any such con-	
	templated action shall be enjoined. Failure of Defendants to renew	
	their motion to enjoin any such action within said thirty (30) days	
	Shall entitle Plaintiffs to institute and to proceed with such actid	n_
	against any customer so named in Plaintiffs' notice. Zamano I	
	11-10/30/08 Copies mailed to all counsel. Certified conv mailed	
10/10	to Clerk, Eastern District of New York.	
12/19	Notice To Take Deposition, on Oral examination, on December 30, 1968, of Defendant, Stanley Arron, with request for	
1000	production of certain documents and things, filed by Plaintiffs.	
1962		
1/15	Deposition of Max Arron, filed.	
1/24	Motion for an Order citing in Benjamin M. Hines and Lois D.	
	Hines, both of 546 Old Academy Road, Greenfield Hill, Fairfield, Connecticut, as additional parties plaintiff and for an Order per-	
	mitting defendants to amend their Answer to include additional	
	counterclaim, Notice of Motion, and Memorandum in Support of Motion,	
	filed by Defendants.	
1/24	Statement of Edward F. Kunin in Opposition to Motion for	
	Default, filed by Defendants.	
1/29	NOTICE Of Motion and Motion For Judgment by Default under Rule 37 of	
	F.R.C.P., and Plaintiffs' Memorandum In Support of their Motion for An Order	
	of Judgment by Default And A Request for Cost and Attorney's Fees with Respect	
-7	to this Motion, filed by Plaintiffs,	
1/30	Plaintiffs' Memorandum in Opposition to Defendants' Motion,	
	filed.	
2/3	Notice of Deposition of Irving Gorback, on February 14,	
	1969; and Herschel Dreyer, on February 14, 1969, filed by Plaintiff	
2/3	Costanzo.	
	Hearing on (1) Defendants' (Stanley Arron, et als) Motion	
	for an Order Citing in Benjamin M. Hines and Lois D. Hines, Fairfield	d,
	Connecticut, as Additional Parties Plaintiff herein; (2) Plaintiffs'	
	Motion for Judgment by Default under Rule 37 of F.R.C.P. Decision Reserved on both motions. Reply brief to be filed within 2 weeks	
	and renty thereto to be filed within 1 weeks	
	deposition is prepared, counsel is to meet with the Court the first	
	Monday thereafter, in chambers for conference. Zampano, J. 11-2/5/6	
	rioliday chereatter, in chambers for conterence. Zampano. 1. 11-7/5/6	
	(Cont'd	

1968	PROCEEDINGS	Date Judgm
10/30	Notice of Settlement of Order, filed by Plaintiffs.	
	Order entered (1) that Plaintiff Costanzole action a single	
	Hygrade Cutlery Co., pending in the U.S. District Court for the Eastern District of New York is stayed pending the completion of	
	Eastern District of New York is stayed pendin, the completion of	
	the trial of the action now pending before this Court, subject how-	
	ever to said stay being lifted in the event Wygrade Cutlery Co. shall ma'e, use or sell alleged infringing low-voltage battery	
	heated socks, etc.; (2) that defendants' motion to further enjoin	
	Plaintiffs from instituting any further actions of infringement	
	or Plaintiffs U.S. Let ers Patent No. 3.293,405 against any customer	-
	or visa therm Products, Inc. is permitted to to off without prejudic	e;
	(3) Plaintiffs' right to institute any further action for patent	
	Intringement of said Letters Patent 3, 293 405 a single any customers	
	of the Defendants shall be subject to Plaintiffs ivin. Defendants'	
	counsel thirty (30) days written notice of any such intention, and said notice shall include the name of any customer against which	
	such action is contemplated. Defendants, after receipt of said notice, may if they so desire, on notice, renew their motion at which	
	time the Court shall then rules as to whether or not any such con-	
	templated action shall be enjoined. Failure of Defendants to renew	
	their motion to enjoin any such action within said thirty (20) days	
	Shall entitle Plaintitts to institute and to proceed with such actid	n
	against any customer so named in Plaintiffs' notice 72 mano 1	
	to Clerk, Eastern District of New York.	
2/19	Notice To Take Deposition on Oral evamination on	
	Notice To Take Deposition, on Oral examination, on December 30, 1968, of Defendant, Stanley Arron, with request for	
1000	production of certain documents and things, filed by Plaintiffs.	
963		
/15	Deposition of Max Arron, filed.	
124	Motion for an Order citing in Benjamin M. Hines and Lois D. Hines, both of 546 Old Academy Road, Greenfield Hill, Fairfield,	-
	Connecticut, as additional parties plaintiff and for an Order per-	
	mitting defendants to amend their Answer to include additional	
	counterclaim, Notice of Motion, and Memorandum in Support of Motion	
10:	filed by Defendants.	
1/24	Statement of Edward F. Kunin in Opposition to Motion for Default, filed by Defendants.	
/20		
1/29	NOTICE Of Motion and Motion For Judgment by Default under Rule 37 of F.R.C.P., and Plaintiffs' Memorandum In Support of their Motion for An Order	
	of Judgment by Default And A Request for Cost and Attorney's Fees with Respect	
	to this Motion, filed by Plaintiffs.	
/30	Plaintiffs' Memorandum in Opposition to Defendants' Motion,	
10	filed.	
/3	Notice of Deposition of Irving Corback, on February 14,	
	1969; and Herschel Dreyer, on February 14, 1969, filed by Plaintiff	
73	Costanzo, Hearing on (1) Defendants' (Stanley Arron, et als) Notice	
	Hearing on (1) Defendants' (Stanley Arron, et als) Motion for an Order Citing in Benjamin M. Hines and Lois D. Hines, Fairfield	d
	Connecticut, as Additional Parties Plaintiff herein; (2) Plaintiffs	
	Motion for Judgment by Default under Rule 37 of F.R.C.P. Decision	
	Reserved on both motions. Reply brief to be filed within 2 weeks	
	and reply thereto to be filed within 1 week. After transcript of	
	deposition is prepared, counsel is to meet with the Court the first	
	Monday thereafter, in chambers for conference. Zampano, J. 1-2/5/6	
'	(Cont'd)

1969	PROCEEDINGS	Judgment Notes
2/18	Plaintiffs' Reply to Defendants' Memorandum of Law, filed.	
2/24	Deposition Subpoena to Irving Gorbach with certificate	
	of service attached, filed by Plaintiffs. Deposition Subpoena to Herschel Dreyer with certificate of	
	service attached, filed by Plaintiffs.	
1/6	Deposition of Stanley Arron (Volume I), filed.	
11	Memorandum of Law, filed by Defendants.	
3/6	Ruling on Motions to Cite in Additional Parties and to Amend Answer, entered. Ordered that the defendants' motion to submit an	
	amended complaint and counterclaim is granted, and it is further	
	(ordered that the defendants' motion to cite in Benjamin M. Hines and	
	Lois D. Hines as counter-defendants to the counterclaim is granted.	
/14	Zampano, J. 1277/ Copies mailed to all counsel. Amended Answer and Counterclaims, filed by defendants.	
1	Summons issued for service of Amended Answer and Counter-	
	claims upon Benjamin M. Hines and Lois D. Hines, and together with	
	copies of same and of Amended Answer and Counterclaims, handed to the Marshal for service.	
/19	Motion for Production and Inspection and/or Copying and/or Photoproduction, Pursuant to Rule 34 F.R.C.P., and Notice of Motion,	
	Photoproduction, Pursuant to Rule 34 F.R.C.P., and Notice of Motion,	
101	and Statement in Support of Motion, filed by Defendants.	
121	Marshal's Return Showing Service, filed Summons, Amended Answer and Counterclaims - Benjamin & Lois Hines.	
1/1	Motion for Production and Inspection and/or Copying and/or Photoproduction	n,
	Pursuant to Rule 34 of F.R.C.P, and Notice of Motion, filed by Plaintiffs, with Memorandum In Support of said Motion.	
./2	Reply to Plaintiffs' Motion for Production, filed by Defendar	its
1/2	Plaintiffs' Interrogatories to Defendants (Sixth Set) filed.	199,
1/9	Objections to Plaintiffs' Interrogatories, Notice of Hearing	
700	and Statement in Support of Objections, filed by Defendants.	
/22	Memorandum in Opposition to Defendants' Objection to Interrogatories Filed by Plaintiffs.	
/22	Memorandum in Opposition to Defendants' Motion for Productio	n
75	Filed by Plaintiffs. Hearing on (1) Defendants' Motion for Production, Inspection	+
13	and/or copying and/or photoproduction of various documents; (2)	
	Plaintiffs' Motion for Production, Inspection and/or Copying and/or Photoproduction of Various Documents; and (3) Defendants' Motion	
	Photoproduction of Various Documents; and (3) Defendants' Motion	
	for Protective Order and Objections to Plaintiffs' Interrogatories. (D) Motion endorsed as follows: 5/5/69 Paragraph 1 is denied	·
	lexcept for 1966 calendar. Paragraphs 2, 3, 6(a), 5(b) and 11 are	
	granted. Paragraphs 4 and 5 have been complied with. Paragraphs 7(7(b), 8 and 10 are withdrawn. Paragraph 9 is granted to the extent	h)
	7(b), 8 and 10 are withdrawn. Paragraph 9 is granted to the extent	
	agreed upon. Paragraph 12 is denied except as agreed upon in open Court." Zampano, J. (2) Notion endorsed as follows: "Paragraphs 1,5	
	6, 7, 8(in port), 9, 10, 11, 12,13, 15 and 16 have been complied wit	h
	6, 7, 8(in part), 9, 10, 11, 12,13, 15 and 16 have been complied wit Paragraphs 2 and 3 are denied except with respect to telegrams. Paragraphs 4, 8 and 14 are granted to the extent agreed upon in oral	
	largument. Paragraphs 17, 18, 19 and 20 are granted. Robert C. Zamp	ano,
	U.S.D.J. (3) Objections overruled. Zampano, J. Copies of endorse	ments
/18	mailed Messrs. Fattibene, Schwartz, Kunin and Junkins, H.S/0/60 terreserved to Defendants Amended Answer and Counterclaims, filed by plaintiffs	s
/23	Notice of change of Address, filed by Plaintiff's Attorney,	
	Arthur T. Mattibene. Plaintiffs' Request for Admission, filed.	
75	Plaintitts' Request for Admission, filed.	-

1969	PROCEEDINGS	Date (
6/12	Reply to Plaintiffs' Request for Admission, filed by	
6/13	Court Reporter's Notes of Motions heard 5/5/69 at Bridgepo	rt,
6/17	Answers to Plaintiffs' Sixth Set of Interrogatories, filed	
6/24	by defendants. Notice of Deposition of Henry DeMarco, an officer of	
6/27	Shelton Hosiery Co. on July 15, 1969, filed by plaintiffs. Depositions of Herschel Dryer and Irving M. Gorbach.	
7/9	filed. (Contained in one envelope) Request that Volume One of the Deposition of Stanley	
	Arron be returned to Attorney Edward F. Kunin, received. "7/9/69	
7/10	Approved, R. C. Zampano, U.S.D.J." M-7/9/69. Volume One of Deposition of Stanley Arron returned to	
7/14	Attorney Edward F. Kunin. Receipt received from Attorney Edward Kunin for Volume	
	One of Deposition of Stanley Arron. Order entered that Attorney T. Fattibena send copies of al	1
	moving papers and pleadings to Attorney Ernest Junkins, the patent	
	fattorney for Visa-Therm Products. Zampano, J. Copies mailed Messrs Fattibene, Schwartz, Kunin and Junkins. 11-7/14/79.	•
7/31	Motion for Order for Production and Inspection Pursuant to	P
7/31	Rule 34 of F.R.C.P. and Notice of Motion, filed by defendants. Deposition of Henry J. DeMarco, filed.	
8/8	Notice of Deposition of Timely Products Corporation and Benjamin Hines, on August 20, 1959, filed by defendant Visa Therm	-
	Products. Inc.	
9/8	Motion for Judgment by Default pursuant to Rule 37, F.R.C. Notice of Motion and Memorandum in Support of Motion, filed by	Р.,
2/12	Plaintiffs. Plaintiffs' Interrogatories to Defendants, filed.	
9/15	Plaintiffs' Reply to Defendants' Motion for Production.	
0/15	filed.	
9/15	Hearing on (1) Defendants' Motion for an Order for Product and Inspection. (Calendar endorsed as "Granted".) Motion endorsed	ı.on
	as follows: "Off, per agreement of counsel." Zampano, J. (2) Plaintiffs' Motion for Default under Rule 37, "Denied, on condition	
	Plaintiffs' Motion for Default under Rule 37, "Denied, on condition set by Court." Zampane, J. 11-9/16/69 Copies of endorsements	11
	mailed to all counsel.	
9/16	Statement in Opposition to Plaintiffs' Motion for Default, filed by defendants.	
10/6	Notice of Deposition of Defendant, Stanley Arron, on	
	October 14, 1969, filed by Plaintiffs.	
10/10	Answers to Plaintiffs' Interrogatories #267 through #272, filed by Defendants.	
10/10	Notice of Deposition of Arthur T. Fattibene, Attorney	
	for Plaintiffs on October 29, 1969, filed by Defendant, Visa Therm Products, Inc.	
10/10	Notice to Produce, filed by defendants.	
10/13	Motion to Quash Plaintiffs' Notice of Deposition served	
	October 3, 1969, Notice of Motion and Memorandum in Support of Defendants' Motion to Quash, filed by defendants, Stanley Arron	
	and Visa Therm Products.	
10/15	Reply to the Affirmative Defenses and Counterclaim of the Counter-Defendants Benjamin M. Hines and Lois D. Hines, filed by	
	Defendants and Counter-Plaintiffs.	

1969	PROCEEDINGS	Date Order or Judgment Note
0/15	Motion to Compel Benjamin Hines to Answer Certain Questions	
	which he Refused to Answer at his Deposition and Produce Certain	
	Documents which he Refused to Produce Pursuant to Subpoena, Notice	
	of Motion, and Memorandum, filed by Defendants. MEMorandum in Opposition To Defendants' Motion ToCompel Answers,	
10/17	MEMorandum In Opposition To Defendants Motion ToCompel Answers,	
	Ciled by Plaintiffs.	
0/20	Memorandum in Opposition to Defendants' Motion to Compel	
	Plaintiffs to Answer Certain Questions and to Produce Balance	
	Sheets of Profit and Loss Statements of Time/Products Corp. from	
0/20	1965 to date, filed by Plaintiffs.	
0/20	Hearing on (1) Defendants' (Stanley Arron and Visa Therm Products) Motion to Quash Portions of Plaintiffs' Notice of Deposit:	on
	"Denied." Zampano, J. M-10/21/69 (2) Motion to Compel Benjamin	-011.
	Hines to Answer Certain Questions which he Refused to Answer at	
	His Deposition and Produce Certain Documents Which he Refused to	
	Produce Pursuant to Subpoena (Defendants' Stanley Arron and Visa	
	Therm), "(1) With respect to: Pages 8 & 9 - granted; Page 73 -	
	denied: Page 96 - granted to extent of gross amounts and places.	
	(2) With respect to production of financial sheets: denied, with	
	leave to renew." Zampano, J. 14-10/21/0) (See Transcript for	
	rulings on these motions in full) Copies of endorsements mailed	
	to all counsel. Defendant Stanley Arron to be taken	by
1/12	Notice of Deposition of/plaintiff Ralphael J. Costanzo on	
	November 13, 1969, filed.	
1/25	Notice of Deposition of Raphael J. Costanzo, defendant, to	
	be taken on January 6, 1970, filed, by defendants Visa Therm Pro-	
	ducts, Inc. and Stanley Arron.	
1/28	Notice of taking Deposition of defendant, Stanley Arron,	
-7	on December 4, 1969, filed by plaintiffs. Court Reporter's Transcript of Proceedings of October 20,	
1/28	Court Reporter's Transcript of Proceedings of October 20,	
277	1969, filed. Keane, R.	
2/4	Notice of Deposition of Defendant Stanley Arron to be taken	
11.11	on Nacember 8, 1969, filed by Plaintiff.	
1/23	Exhibits filed by defendants'.	
1:11	Plaintiffs Interrogatories to Detendants filed.	
3/16	Plaintiffs Interrogatories to Detendants, filed. Motion Fursuant to Local Rule 9 (g) That Action he Assigned	
	to Monorable Robert C. Zampano for all purposes. Motice of Motion,	
	and Memorandum In Support of Motion, filed by Flaintiff's.	
3/16	Defendants' Interrogatories to Plaintiffs, filed.	
3/18	Deposition of Benjamin M. Hines, filed.	
3/23	Defendants' Answers To Interrogatories, filed.	
1730	Defendants' Answers To Interrogatories, filed. Objections to Defendants Interrogatories #34 and 35 and 'oti of Meaning, filed by Phaintiff.	
	of Meaning, filed by Plaintiff.	
3/20	i Monorandne In Puppert of Plaintiffs' Motion, filed.	
11	Plaintiffa! Dequest for Admissions, Siled.	
7/3	Le endants' Reply to Plaintiffs' Request for Admissions, fil	ea.
11/16	that is Take Deposition of Milton Todall on April 30, 1970	-
7.731	Plaintiff, Timely Products Corporation's Auswers to	
4/21	Defendants' Interrogatories, filed.	
	The state of the s	
1/22	Motion For an Order Vacating and Setting Aside Notice of Taking of	
	Deposition of Milton Podell, with Notice 62 Motion and Affidavit of Stanley	
	Arron, filed by Defendants,	

1970	PROCEEDINGS	Date O Judgmei
4/20	Plaintiff's Motion for an Order Striking Defendants' Interroga- tories #34 and 35, endorsed as follows: "4/20/70. Notion granted,	
3/4	Hearing on Detendants' Motion for an Order Vacating and Setting Aside Notice of Taking of Deposition of Milton Podell. "Denied."	21.
	Zampano, J. M-5/5/70 Copies mailed to all counsel.	
5/7	Notice of Deposition of Milton Podell, on May 15, 1970, at New York, filed by Plaintiffs.	
5/18	Hearing on Plaintiffs' Motion that the Above-entitled Action	
	De Assigned to Hon. Robert C. Zampano for all purposes Including	
	to Preside at the Trial of the Action. "Motion granted, absent objection. See separate order entered today." Timbers, J. M-5/19/	70
5/19	Copies mailed to all counsel and to Judge Zampano.	
	Order Assigning Case to Judge Zampano for all Purposes, entered Timbers, J. M-5/19/70 Copies mailed to all counsel and to Judge	
6/5	Zampano, Notice to take Deposition of Robert McCarthy on June 10, 1970,	
	filed by Plaintiffs.	
7/30	Notice to take Deposition of Robert McCarthy on August 10, 1970	
9/14	Motion to Amend Complaint, Notice of Motion and Memorandum in	
	Support of Motion, filed by Plaintiff.	
10/21	Deposition of Robert J. McCarthy, filed. Memorandum of Law, filed by Defendants.	
10/5	Plaintiffs' Reply Memorandum, filed.	
	Hearing on Plaintiffs' Motion to Amend the Complaint, etc	
-	"Application for a Preliminary Injunction is denied. Motion to Amend Complaint is granted. Discovery proceedings are opened as to the	
10/15	Complaint is granted. Discovery proceed: a cre opened as to the latest cause of action. Zampano, J. M-10/6/70, Copies mailed counse	•
10/13	Notice to take Deposition of Stanley Arron on October 26, 1970, filed by Plaintiffs.	
	Second Amended Complaint, filed by Plaintiffs.	
	Demand for Jury Trial, filed by Plaintiffs.	
11/4	Defendants' Amended Answer and Counterclaims, filed. Defendants' Interrogatories to Plaintiffs, filed.	
11/12	Court Reporter's Transcript of proceedings of 10/5/70, filed. Russell, R.	
11/13	Stipulation, filed, that the defendants may amend their answer as	nd
	counterclaim. So Ordered. Zampano, J. M-11/13/70. Copies mailed	
11/16	Reply to Defendants' Second Amended Answer and Counterclaims.	
-11/12	filed by plaintiffs.	
11/17	Notice to Produce, directed to plaintiffs, filed by defendants.	
	Notice to take Deposition of Stanley Arron, President of Visa- Therm Products, on 12/3/70, filed by Plaintiff. Plaintiffs' Interrogatories to Defendants, filed.	
11/25	Plaintiffs' Interrogatories to Defendants, filed.	
12/8	Plaintiffs' Answers to Defendants' Interrogatories, filed.	
1/14	Defendants' Interrogatories to Plaintiffs, filed.	
1/21	Defendants' Interrogatories to Plaintiffs, filed. Plaintiffs' Response to Defendants' Request for Production of	
1/00	Documents, filed.	
1/28 2/15	Answers to Plaintiffs' Interrogatories to Defendants, filed. Plaintiffs' Interrogatories to Defendants, filed. Plaintiffs' Request for Production, filed. Plaintiffs' Response to Defendants' Interrogatories Filed on or	
2/15	Plaintiffs' Request for Production, filed.	
2/17	Plaintiffs' Response to Defendants' Interrogatories Filed on or	
	(Cont.)	. 1

! 110 Rev. Civi: Pocket Continuation	TIMELY	PRODUCTS	CORP	et	al	٧.	STANLEY	ARRON.	ET A	ALS
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71	PROCEEDINGS	Date Order or Judgment Note
	About January 13, 1971, filed.	
22	Plaintiffs' Request for Admissions to Defendants, filed.	
2	Plaintiffs' Request for Admissions to Defendants, filed. Defendants' Reply to Plaintiffs' Request for Admissions, filed Defendants' Answers to Plaintiffs' Interrogatories, filed.	
26	Defendants' Answers to Plaintiffs' Interrogatories, filed.	
	Defendants' Response to Plaintiffs' Request for Production,	
-	filed.	
10_	Motion to Compel production for Inspection, Notice of Motion	
;	and Memorandum in Support of Motion, filed by Defendants. Notice of Deposition of Kathy Biafore on May 14, 1971, filed	
	by Plaintiffs.	
12	Motion for Protective Order, Notice of Motion, Plaintiffs'	
	Memorandum in Support of Plaintiffs' Motion for a Protective Order	
	Pursuant to Rule 26(c) and in Opposition to Defendants' Motion for	
	Production Pursuant to Rule 37 (a) and Affidavit of Richard L. Johns	on.
	filed by Plaintiffs. Hearing on (1) Defendants' Motion for an Order Compelling	
7	Héaring on (1) Defendants' Motion for an Order Compelling	
	Plaintills to Produce for Inspection various bocuments. Motion	
	granted in part to extent stated in open Court and denied in part",	
	(2) Plaintiffs' Motion for a Protective Order Pursuant to Rule 26(c)	
	and in Opposition to Defendants' Motion for Production Brought on	
	Pursuant to Rule 37(a). "Motion moot, based on Court's disposition of defendants' Motion to Produce of 5/17/71". Zampano, J. M-5/13/7	
	Copies mailed to all counsel.	
0	Plaintiffs' Request for Production, filed.	
28	Court Reporter's Transcript of Proceedings of May 17, 1971,	
	filed. Cohen, R,	
8	Lefendants' Reply to Plaintiffs' Request for Production, filed	
15	Deposition of Kathleen Biafore, filed.	
10	Motion for Production, Notice of Motion and Memorandum in	
	Support of Motion, filed by plaintiffs. Memorandum in Opposition to Plaintiffs' Motion to Compet	
	Production filed by defendants	
5	Production, filed by defendants. Hearing on Plaintiffs' Motion for an Order Compelling	
	Defendants to Produce for Copying and Inspection, Various Documents	
	and Things. 'Motion denied without prejudice to right to renew	
	at pretrial conference at which time defendants will have the	
	records at issue available for inspection by the Court." Latimer,	
	U.S. Magistrate, M-7/7/71. Copies mailed to all counsel.	
2	Plaintiffs' Interrogatories to Defendants and Requests for	
	Production, filed.	
	Magistrate Latimer's Transcript of proceedings held on July	
	6, 1971, filed. (Plaintiffs' Motion)	_
	Defendants Response to Plaintiffs'Interrogatories and Request for Production Dated July 9, 1971, filed.	CS
2	101 Froduction pated July 9, 1971, 111ed.	
26	Motion to Compel Answers to Interrogen ries and/or Production	
	Motion to Compel Answers to Interrogap ries and/or Production Notice of Motion and Memorandum in Support of Motion, filed by	
	Plaintiffs	
2/2	Reply to Plaintiffs' Motion to Compel Answers to Interrogatori	es,
	filed by defendants.	
17	Hearing held on Plaintiffs' Motion for an Order to Compel	
	Hearing held on Plaintiffs' Motion for an Order to Compel Defendants to Answer Interrogatories and/or Produce for Inspection	
	and/or Produce for Inspection and/or Copying Documents, Etc. "Decision Reserved." Latimer, U.S. Magistrate, M-2/8/72.	
	"Decision Reserved." Latimer, U.S. Magistrate, M-2/8/72.	
	·	

1972	PROCEEDINGS	Date Or Judgmen
3/9	Motion for an Order to Compel Defendants to Answer Interrega-	
	filed by plaintiffs.	
3/29	Order on Plaintiffs! Motion to Come! ontered Ordered that	
21 67	Order on Plaintiffs' Motion to Compel, entered. Ordered that plaintiffs' pending motion to compel, pursuant to Role 37(a), F.R.C.	D
	is granted in its entirety, with compliance to be effected within	
	thirty days following entry of the within order; provided, (see Order	r).
	No further discovery will be permitted to delay the assignment of	
	this action for pretrial conference and trial without ex press leave	
	granted by the trial Judge, and it is recommended that the action be assigned for a full pretrial conference on the first available	
-	assignment date subsequent to May 1, 1972. No costs are imposed at	
	this time. Latimer, U.S. Magistrate M-3/30/72 Copies malled to	
	all counsel, Magistrate.	
7/28	Defendants' Answers to Plaintiffs' Interregatories, filed. Motion for an Order Clarifying the Court's Order on Plaintiff	
120	Motion to Compal dated March 20 1072	S
	Motion to Compel, dated March 29, 1972 and Notice of Motion, filed by defendants.	
8/9	Statement, filed by defendants. Plaintiffs' Kemorandum in Opposition to Defendants' Netion Set for Mearing on September 18, 1972, filed.	
- 1	Set for Hearing on September 18, 1972, filed.	
8/10	Motion for Sanctions Pursuant to Rule 3/ of F.R.C.P. and	
"	Notice of Notion, filed by plaintiffs.	
	Memorandum in Support of Its Notion for Sanctions Pursuant to Rule 37 of F.R.C.P., filed by plaintiffs.	
8/28	Hearing on (1) Defendants' Motion for an Order Clarifying the	
	Court's Order on Plaintiffs' Motion to Compel, Dated March 29 1972	
	Granted, as Stated in Open Court. Latimer, H.S. Magistrate: (2) pla	in-
	Clis Motion for an Order Imposing Sanctions for Defendanta! Fail.	е
	to Comply with Court's Order of March 29, 1972. Denied, as Stated in Open Court. Latimer, U.S. Magistrate. 11-8/23/72	
"	Plaintiffs' Motion for an Order Imposing Sanctions for Defend	
	dants Fallure to Comply with Court's Order of March 29, 1972, en-	
	QOTSEC &S 10110WS: "Motion denied, examination ordered as stated in	
	open court. Latimer, U.S. Nagistrate M-3/29/72 Copies mailed to	
	Defendants' Motion for an Order Clarifying Court's Order on	
	Plaintiffs' Motion to Compel, endorsed as follows: "Motion granted,	
	examination ordered as stated in open court." Latimer, U.S. Magistra	te
	N-0/29/12 Copies to all counsel.	
8/29	TapeRecording of U.S. Magistrate Latimer's of proceedings	
8/31	held on August 28, 1972, filed.	
01.31	Order for Discovery, entered. Latimer, U. S. Magistrate. M-8/31/72 Copies mailed to all counsel.	
10/3	Plaintiffs' Exhibits, filed.	
	Names and Addresses of Plaintiffs' Witnesses, filed.	
"	Defendants' List of Exhibits filed.	
-	Detendants' List of Witnesses, filed.	
10/6	Order Re PreTrial Conference and Trial Assignment, entered. In accordance with representations of counsel made to the undersign	a
	U.S. Magistrate at preliminary pretrial conference, counsel are to	
	file a stipulation withdrawing the demand for jury trial herein.	
	A full exetrial conference in accordance with Level Duly 10 to	
	be held before the unders gned U.S. Magistrate at New Haven on Monday, Oct. 30, 1972 at 10:00 A.M. This action is to proceed as a	
	Holiday, Oct. 30, 1972 at 10:00 A.M. This action is to proceed as a	
	(Cont'd.)	

75	PROCEEDINGS	Date Order or Judgment Noted
12	trial to the Court before the Hon. Robert C. Zampano, U.S. D.J.,	
	on Tuesday, Dec. 5, 1972 at the Bridgeport seat of Court, with said trial proceedings to be limited solely to the issues of liability.	
	(See Order for further details) Latimer, U.S. Magistrate. So	
/12	Ordered. Zampano, J. N-10/0/72 Copies mailed to all counsel. Motion to Resolve Questions Relating to Discovery and Notice	<u> </u>
	of Motion filed by defendants	·
"	Defendants Memorandum in Support of its Motion to Resolve Questions Relating to Discovery, filed. Motion for an Order Resolving the Unresolved question of	
0/17	Motion for an Order Resolving the Unresolved question of	
	Plaintiffs' Discovery and for a Protective Order, and Notice of	ļ
·	Motion, filed by plaintiffs. Plaintiffs Memorandum in Support of Their Motion Directed	
	to Unresolved Discovery Matters and Reply to Defendants' Motion,	
1/20	filed	
1/24	Defendants' Reply Memorandum to Plaintiffs' Motion, filed. Hearing on (1) Detendants' Motion to Resolve Questions	
	palaring to Discovery: (2) Plaintiffs' Motion for Order Compelling	
	Detendants to Produce for Inspection and/or Copyin g. Decision Reserved on both motions. Case to be set for pre-trial on Monday,	
0.755	lock 30th latimer U.S. Magistrate, M-10/20/12	
0/25	entered. (See Ruling for details) Latimer, U.S. Magistrate	•
- 10-	M-10/26/72 Conies mailed to all counsel.	ļ
7/27	Plaintiffs' Amended Answers to Defendants' Interrogatories, filed.	
1/30	Stipulation filed that the respective parties in this action	
11	waive a Jury Trial as to all factual issues.	
11	Defendants' List of Exhibits, filed. Plaintiffs' Exhibits, filed.	
73	Jurisdiction and Venue filed by both parties	
./3	PreTrial Order, entered. The subject of possible settlement was briefly discussed and the possibility of settlement appears re-	
	more. Counsel have filed a stipulation walving jury trial herein	
	as to all factual issues. This action is to be assigned forthwith as a trial to the Court before the Honorable Robert C. Zampano, U S	
—	D.J., said trial to commence on Tues., Dec. 5, 1972 at the Bridgept	
	seat of Court and to be limited solely to the issues of liability.	
	Latimer, U.S. Magistrate. So Ordered. Zampano, J. M-11/3/72	1
279	*** *** *** *** *** *** *** *** *** **	
11	Notice of Motion, filed by plaintiffs. Plaintiffs' Memorandum in Support of Their Motion for	
	Sanctions Pursuant to Rule 37(b) of FRCP, filed. Defendants' Statement in Opposition to Plaintiffs' Motion fo	
/18	Sanctions, filed.	<u> </u>
"	Supplemental Notice, filed by plaintiffs. Hearing on Plaintiff's Motion for Sanctions Pursuant to Rule	
/18	Hearing on Plaintiff's Motion for Sanctions Pursuant to Rule 37(b) of FRCP. Defts to turn over to Pltfs for inspection the 7	
	betagories of items set forth by Mr. Strasser in his letter dated	1
	B/31/72 and any other record books and lists compiled, or documents.	1
73	Zampano, J. M-12/19/72	+
11	Defendants' Reply to Affirmative Defenses and to Counter-	
	Defendants' Counterclaim and Plaintif's' Counter-Counter-Claim with	

1073	PROCEEDINGS	Date Ord Judgment
1102	Respect to Definedants' United States Patents, filed. Plaintiffs' Supplemental Witness List, filed.	
1/25	Plaintiffs' Supplemental Witness List, filed.	
2/8	Supplemental List of Plaintiffs' Libilite, filed.	
2/13	Plaintiffs' Supplemental List of Exhibits, filed. Court Reporter's Transcript of proceedings held on December	
	18. 1972, riled. (Russell, R.)	
2/27	Court Assignment "over indefinitely per Judge Zampano. Counsel notified by telephone". Zampano, J. M-2/8/73	
2/20	Counsel notified by telephone". Zampano, J. M-2/8/73	
3/20	Order Vacating Assignment to Judge Zampano for all Purposes,	
3/26	entered. Blumenfeld, J. M-3/20/73 Copies mailed to all counsel. Supplemental Witness List, filed by plantiffs.	
1/	Suptraction of the substitute of the second second	
3439 4		
4/9	Plaintiff's Reply Memorandum to Defendants' Trial Brief, fil	ed.
4/10	Plaintiffs' Supplemental List of Exhibits, filed. At the Call of Judge Lumbard Court Assignment List at Bridge	
*	port "Judge Lumbard disqualified -to be reassigned."	
4/12	Plaintiffs' Motion to Compel Witnesses Properly Served with	
	Subpoenas to Honor the Subpoenas and to Extend the 100 Mile Limit	
*4/11	of Rule 45, filed.	
	Counsel report to Court as to status of subpoenas issued. Court reports to counsel that Judge Zampano has been contacted re-	
	garding an early trial and instructs counsel to call Judge Zampano	-
	to arrange a conference regarding trial. Lumbard, C.J., Sitting by	
4/19	Designation. M-4/13/73 Order entered (1) that the witnesses the plaintiffs have	
4/13	already served shall honor the subpoenas served upon them and shall	
	make themselves available to testify at the adjourned time, place and date as may be required by the Plaintiffs, etc.; (2) That the	
	one day's witness fee already tendered the witnesses is sufficient to compell the witnesses' attendance at the hearing, etc.; (3) That	
	the suppornes limit of 100 miles of Rule 45 F.R.C.P. be extended to	
	Plaintiff, witnesses who reside within 100 miles of Bridgeport,	
	Conn., the original site of the hearing, so as to compel their	. 4
	appearance in Waterbury, etc. Zampano, J. Copies mailedto all counsel. M-4/19/73	
5/11	Defendants' Pre-Trial Brief (Reply), filed.	
5/11	Defendants' Trial Brief, filed.	
5/31	Max Arron Deposition Exhibits, Biafore Deposition Exhibits,	
	Dellarco Deposition Exhibits, Gorbach Deposition Exhibits, McJarthy	
	Deposition Exhibits, and Pillar Deposition Exhibits, filed in six (6) individual envelopes.	
" 0	Deposition of Denjamin M. Mines (Exhibits), filed,	
- 11	Deposition of Raphael J. Costanzo, filed.	
	Deposition of Stanley Arron, Volumes #1, #2, #3, #4, and #5,	
	Lithibits, filed. Five (5) individual envelopes. Deposition of Stanley Arron, filed.	
3/5	Stipulation, filed by the parties.	
3.5	Stipulation, filed by the parties. (
6/11	Court Trial Commences at 10:25. Opening Statements by Plain-	
	tiff and Defendant: 10:27 - 10:55. Stipulation on Exhibits 1 thru 9 filed, *Deposition of Milton Podell, filed. Plaintiffs' 1.1-A.2.	2-A
	3,3-A,3-B, 4 thru 9, filed. 1 Plaintiffs' witness sworn and testi-	Z-A,
	fied. Plaintiffs' Exhibits 506, 506A, 325, 506B, 506C, 503 and 474	
	filed. Testimony of Witness Dennis Murphy interrupted and Plaintiff	s '

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DATE 1973	PROCEEDINGS	Date Order Judgment No
	witness Katherine Biafore sworn and testified. Plaintiffs' Exhibit 78, 521, 522, 523 filed; Defendants' Exhibit F-1-F marked for Id. Dennis Murphy whose testimony was interrupted, resumes stand for sectioned exemination. Plaintiffs' Exhibits 475, 47, 318G and 83	<u>s</u>
·	continued examination. Plaintiffs' Exhibits 475, 47, 318G and 83 filed. Court adjourned in this case to 10:00 A.M., 6/12/73. Murphy, J., Sitting by Designation. M-6/12/73	
*6/11	Deposition of Milton Podell, filed.	
6/12	Court Trial Continues. Plaintiff's witness Dennis Murphy resumes the stand for further testimony. Defendants' Exhibits	
	F-18 filed; H-7, F-1-G, ZZ-6 and ZZ-12 marked for identification.	
	Testimony of witness Murphy interrupted and plaintiff's witness	
	Irving Gorback sworn and testified. Plaintiff's Exhibits 34, 35 and 36 filed; 106 filed; 508 marked for ident. Defendants' Exhibit	## (## C T T T T T T T T T T T T T T T T T T
	DXI-6 marked for ident. Court adjourned at 4:15 P.M. to 10:00 A.M.	
	6/13/73 Murphy, J., Sitting by Designation, M-6/13/73	
6/13	Court Trial Continues after chambers con ference. 2 Plain-	
	tiff's witnesses sworn and testified. Plaintiff's Exhibits 11, 112	
	110, filed; 277 marked for ident.; 127, 33, 32, 524, 525 and 526,	
	filed. Dennis Murphy, whose testimony was interrupted, resumes stand for continued direct examination. Defendants Exhibit ZZ-13	
	marked for ident. Court adjourned at 4:30 P.M., to 10:00 A.M.,	
	6/14/73. Murphy, D.J., Sitting by Designation. M-6/14/73	
5/1%	I remain the latter than a chalability to all partitions of population	
	of the area and of Witness and of Theory of head the 2 Plaint	
	Withches book and testifical linearity something 201-A, 20	
	201-0, 201-1, 2/3-1, 1/2, 1/2, 1/2, 1/1, 1/2, 1/1, 1/2, 1/2	
	100 C. Santa - Silvie -2 C.1. d. C. S. aline and at 1.30 1	•
	Court Trial Continued. One plaintiff's witness sworn and	/73
6/15	Court Trial Continued. One plaintiff's witness sworn and	
	testified. Plaintiff's Exhibits 507, 76, 99A, 38A, 535, 84, 120,	
	51, 121, 49, 137, 93, 377, 282, 52, 536, 267A, 252, 255 and 532, filed. Plaintiff's Exhibit 136, marked for Ident. 4:30 P.M.	
	Court adjourned to 6/18/73 at 10:00 A.M. Murphy, DJ, sitting by	
	designation. m-6/18/73.	
6/18	Court Trial Continues One defendant's witness sworn and	
21.	testified. Plaintiff is sworn and testified. Defendant's Exhibits 121B, 121C, ZZ-14, filed. Defendant's Exhibit DXI-6 admitted as a	
0	121B, 121C, ZZ-14, filed. Defendant's Exhibit DXI-6 admitted as a	
	Pull Avninit Plainfiff's Myninit An. 134. 3UZA. 3UZD. 3UZU. 241-A.	
	241-B, 242, 243, 244, 245, 246, 246-A, 247 marked for Ident. Plaints Exhibit 283, 63, 303-L, 469, 436, 274, 10, 13, 114A, 230, 230A,	III 8
	515 and 516, filed. Court adjourned at 4:28 P.M. to 6/19/73 at	
	10.00 A M Murphy D I Sitting by designation, M-6/19/73.	-
6/19	10:00 A.M. Murphy, D.J. Sitting by designation. M-6/19/73. Court Trial Continues. Plaintiff R. J. Costanzo resumes the stand for further testimony. Defendant's Exhibit DX-275, filed	
	the stand for further testimony. Defendant's Exhibit DX-275, filed	•
	Plaintiff's Exhibit 277 admitted as a full exhibit. Defendant's	
	Exhibit D-8 marked for Ident. Plaintiff's Exhibit 44, filed. Court adjourned at 4:25 P.M. to 6/20/73 at 10:00 A.M. Murphy D.J.	
	Sitting by designation. M-6/20/73.	
6/20	resumes the stand for continued direct examination. Plaintiff's	
	resumes the stand for Continued direct examination. Flaintiff's Fishibit 3018 537 538	!
	Exhibit 292 marked for Ident. Plaintiff's Exhibit 301B, 537, 538 and 286, filed. 2 Plaintiff's Witnesses sworn and testified.	1 4
	Defendant's Exhibit H-7 admitted as a full exhibit. Defendant's	1
-	exhibits 228 and 318-0, filed. Defendant's exhibit ZZ-15 marked	i

1973	PROCEEDINGS	Date Order of Judgment Not
	for Ident. Court adjourned at 3:00 P.M. to 10:00 A.M. 6/21/73.	
	Murphy, D.J. Sitting by designation, M-6/21/73.	
6/21	. Court Trial continues. 1 Plaintiff Witness sworn and	
	testified. Defendants' Oral Motion to Dismiss Complaint. Decision	
	Reserved. 2 Defendants' Witnesses sworn and testified. Defendant	
	Exhibit ZZ-11, filed. Defendant Exhibit ZZ-15 admitted as a full	
	Exhibit. Court adjourned at 4:35 P.M. to 6/22/73. Murphy, D.J. Sitting by designation. 6/22/73.	
6/22	Court Trial Continues. Defendant's Exhibits D-8 admitted	
	Court Trial Continues. Defendant's Exhibits D-8 admitted as full exhibits; DX-II, DX-BIA, DXNN, DXNN-1 thru DXNN-15, DXAA,	
	DXZZ-16, DXZZ-17, ZZ-7, PX-499, DX-DD-10, filed. Defendant offers	The second second second
	Plaintiff's answer to Interrogatory No. 16 and amendment. Defendan	
	reads portions of Benjamin Hines Deposition taken on 8/20/69. Defe	
	dant Stanley Arron, previously sworn, resumes stand and testifies on his own behalt. Defendant's Exhibits ZZ-9, ZZ-10, ZZ-1-A filed;	
	F-1-F, ZZ-13 and F-1-G admitted as full exhibits. Testimony of	
	Stanley Arron interrupted and Plaintiff's Rebuttal witness sworn	
	and testified, by agreement of counsel. Plaintiff's Exhibits 268	
	and 269 filed. Stanley Arron resumes stand after interrupted testi	•
	mony. Plaintiff's Exhibits 50 and PX-HH filed. Defendant rests	
	at 2:55 with reservation of continuing examination of witness Allen Dubrow on 6/26/73. Court adjourned at 3:00 P.M. until Monday	
	6/25/73 at 10:00 A.M. Murphy, J., Sitting by Designation. M-6/25	
6/25	Court Trial Continues. Plaintiff's Motion to Dismiss	
	Counterclaim and for a Directed Verdict heard - Decision Reserved.	
	1 Plaintiff's Rebuttal witness sworn and testified. Testimony of	
	Rebuttal witness Weinstein interrupted and plaintiff's witness	-
	Dennis Murphy, previously sworn, resumes the stand and testifies. Plaintiff's Exhibit 311 filed. Rebuttal witness Weinstein resumes	
	stand for continued direct examination after testimony was interrup	ted.
	Court adjourned at 4:30 P.M. to 10:00 A.M. 6/26/73. Murchy, J.,	
	Sitting by Designation, M-6/26/73	
6/26	Court Trial Continues. Plaintiff's Rebuttal witness Louis Weinstein resumes the stand for further testimony. Plaintiff	
	Rests in Rebuttal at 12:05. 1 Defendant's Rebuttal witness sworn	
	and testified. Defendants' Exhibits JJ-1 thru 4 filed. Plaintiff!	S
	Exhibit 72 and 539 filed. Both sides Rest at 3:00 P.M. Plaintill'	S
	Motion to Dismiss Counterclaim - Decision Reserved. Defendants'	
	Motion to Dismiss the Complaint - Decision Reserved. Plaintiff's	
	Motion to Dismiss as to Benjamin & Lois Hines - Decision Reserved. Briefs may be submitted 30 days after receipt of transcript.	
	Decision Reserved. Court adjourned at 3,15 P.M. Murphy, J., Sitti	ng -
	by Designation, M-6/27/73	
7/3	Interrogatories and Admissions to be Placed in Evidence, file	ed
	by plaintiffs. The	
8/2	Stipulation filed that amended complaint and amended answer	* -
	be amended to substitute as party defendant Anna Arron, Executrix of the Estate of Max Arron, in lieu of Max Arron who is now decease	d
8/8	Court Reporter's Transcript of proceedings held on June 11,	
4	12, 13, 14, 15, 18, 19, 20, 21, 22, 25 and 26, 1973, filed.	
	(Beecher, R.) 12 Volumes.	
9/7	Plaintiffs Lain Post-Trial Brief, filed. to 1114	
5/10	Defendants Post Trial Brief, filed. Plaintiffs' Reply to Defendants' Post-Trial Brief, filed. 7	Tr
9/19_		
13/4	(Cont.)	11

10 Rev.	Civil Docket Continuation TIMELY PRODUCTS CORT., et al v. STANLEY ARRON, ET ALS	•
TE 14	PROCEEDINGS	Date Order or Judgment Note
3	Memorandum of Decision, entered. The Clerk is hereby	
	directed (1) to enter judgment in favor of the defendants on plain-	
	directed (1) to enter judgment in favor of the defendants on plain- tiffs' Second Amended Complaint, which is dismissed; to enter judg-	
	ment in favor of the plaintiffs and Benjamin M. Hines and Lois D.	
	Hines dismissing the counterclaims to the Second Amended Complaint	
	of defendants Stanley Arron and Visa-Therm Products, Incl.) to enter	
	judgment dismissing the counterclaim of Benjamin M. Hines and Lois	
	D. Hines against defendants Stanley Arron and Visa-Therm Products, Inc. The judgment so ordered shall in addition declare that the	
	United States Patents numbered 3,293,405, 3,392,264 and 3,524,965	
	are invalid. Costs and attorneys' fees for all parties are denied.	
	This Memorandum/stand for our findings of fact and conclusions of	
9	law pursuant to Rule 52. Murphy, J. M-9/3/74 Copies mailed.	
<i></i>	Court Reporter's Transcripts, (12), Vols. I thru XII, covering proceedings held on June 11, 12, 13, 14, 15, 18, 19, 20, 21, 22,	
	ling proceedings neid on June 11, 12, 13, 14, 15, 18, 19, 20, 21, 22,	
9	25 and 26, 1973, filed. Beecher, R.	
,	Judgment entered (1) in favor of defendants, dismissing	
	plaintiffs' second amended complaint; (2) in favor of the plaintiffs	
	and Benjamin M. Hines and Lois D. Hines, dismissing the counterclaim	5
	to second amended complaint of defendants Stanley Arron and Visa-	
	Therm Products, Inc.; (3) dismissing the counterclaim of Benjamin	
	M. Hines and Lois D. Hines against defendants Stanley Arron and	
	Visa-Therm Products, Inc.; (4) declaring U.S. Patents numbered 3,293,405, 3,392,264 and 3,524,965 invalid; and (5) denying costs	
	3,293,405, 3,392,264 and 3,524,965 invalid; and (5) denying costs	
	and attorneys' fees for all parties. Markowski, C. M-9/9/74	
10:	Copies mailed. *Form AO 120 mailed to Commissioner of Patents.	
18	Motion pursuant to 52(L) for an amendment to the decision	
	entered on the 9th day of September 1974, Notice of Motion and Memo-	
73	randum, filed by Defendants.	
1/3	Memorandum in Opposition to Defendants Rule 52(b) Motion,	\
/11	filed by plaintiffs.	
/11	Defendants' Reply to Plaintiffs' Memorandum in Opposition filed at Bridgeport.	
/11	TO A THE STREET A STREET AS A	
/11	Memorandum on Detendants' motion pursuant to Rule 52(b)	
	F.R.C.P. for an amendment of findings and to make additional finding and to amend judgment, entered. Motion denied. Murphy, J. M-10/1	6/74
		7/14
1/4	Copies mailed.	
7/4	Notice of Appeal, filed by plaintiff Raphael J. Costanzo.	
	Copies mailed to all counsel and to U.S.C.A. along with copy of docket entries.	
/8		
10	Notice or Appeal, filed by Defendants. Copies mailed to Counsel and to U.S.C.A. (Filed by Defendants Stanley Arron and	
	Counsel and to U.S.C.A. (Filed by Derendants Stanley Arron and Visa-Therm Products, Inc.)	
	VIGA-Inclin Houses, Inc.)	
		
		
	I .	
		
		W. 1

UNITED STATES DISTRICT COURT DISTRICT OF CONNET "ICUT

(18)

TIMELY PRODUCTS CORPORATION, ET ALS :

VS.

STANLEY ARRON, ET ALS

: CIVIL NO. 11,864 : U.S.C.A. DOCKET NO. 74-2455

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UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
FEDERAL BUILDING
NEW HAVEN 06505

SYLVESTER A. MARKOWSKI CLERK

November 21, 1974

FRANCES J. CONSIGLIO DEPUTY-IN-CHARGE NEW HAVEN

A. Daniel Fusaro, Esq.
Clerk, United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York

RE: Timely Products Corp., et al vs. Stanley Arron, et als CIVIL NO. 11,864
USCA DOCKET NO. 74-2455

Dear Mr. Fusaro:

Enclosed is Volume XXV to the Record on Appeal in the above-entitled case, along with two copies of the Index for receipting purposes.

The other twenty-four volumes are being sent to you in twenty-four separate envelopes.

Very truly yours,

SYLVESTER A. MARKOWSKI CLERK

Deputy in Charge

M/C/m Enclos.

Enclos.
cc: Arthur T. Fattibene, Esq.
Lawrence B. Schwartz, Esq.
Edward F. Kunin, Esq.
Ernest M. Junkins, Esq.

UMETED STATES DISTRICT COURT DISTRICT OF CONNECTION

TIMELY PRODUCTS COMPORATION and ROTHARL J. COSTAMZO.

Plaintiffe

vs.

Civil Action No. 11864
Plaintiffs Demand Jury
Trial

ST HIMY ACTON, MAX ARRON, ARMA ARRON and VISA-THERM FRUBUCTS, INC.,

Defendants

SECOND ANDERDED COMPLAINT

Plaintiffs, complaining of the Defendants by Arthur T. Fattilions, their attorney, respectfully allege as follows:

Tor the First Cause of Action

- 1. This cause of action is for patent infringement under the laws of the United States. Jurisdiction is conferred upon this Court by Title 35 U.S.C. and more specifically by Title 35 U.S.C. Sections 271, 281, 282, 283, 284, 285 and 286; and by Title 28 U.S.C. Sections 1338, 1391, and 1400(b).
- 2. Plaintiff, Tipply Products Corporation, is a corporation duly organized under the laws of the State of Connecticut and it maintains a regular and established place of business at 210 Eliot Street, Fairfield, Connecticut.
- 3. Plaintiff, Raphael J. Costanzo, is a citizen of the State of Connecticut and he resides in Bridgeport, Connecticut.
- 4. Defendant, Stanley Arron, is a citizen of the State of Connecticut and he resides in Bridgeport, Connecticut.

- 5. Defendant, Max Arron, on information and belief is a cutizen of the State of Connecticut and he resides at 3323 Cld To n Read, Bridgeport, Connecticut.
- 5. Uniondant, Anna Arron, on information and bolief is a oldman of the State of Connecticut and she resides at 3323
- 7. Visa-Thoma Products, Inc. on information and belief is a corporation dely organized under the State of Connecticut and to maintenas a regular and established place of business at 3.23 Old Town Road, Bridgeport, Connecticut.
- d. on or about Deptember 13, 1965, Plaintiff Raphael J.
 Continue filed a United States patent application for "Electrically neuted February" and it was assigned serial number 487,011.
- 9. Figure 19, haphnel J. Costanzo, on December 27, 1965 employingly licensed Plaintiff, Timely Products Corporation, to calle, use and sell the inventions disclosed and claimed in said patent application and in any patent that may issue thereon.
- 10. Plaintiffs, having only and in all respects complied with the conditions and requirements of the United States Patent crassours, in such cases made and provided, and after due examination by the Commissioner of Patents as to the novelty, utility and unitarisation of the respective inventions disclosed and claimed in the aforesaid patent application, there was issued to the Plaintiff, Raphael J. Costanzo, on December 20, 1966, in due compliance with the Patent Statutes in such cases made and provided, U. S. Letters Patent No. 3,293,405, and said Letters Patent one assued in due form of law in the name of the United States of

by the consissioner of ratents, duly recovered and delivered to said Haintlif, Rephael J. Costanzo, and was so issued after due of management and utility of the inventions therein described and said payment of the fees required by law, and that said Letters where of sevenced to the Plaintliff, Rephael J. Costanzo, for the council devences yours from said December 20, 1956 the full and confidence right to make, use and said inventions throughout the United States and its territories as by said original actions Faceas No. 3,293,405 on which profert is hereby made as well more fully and at large appear.

- 11. Describers, Etanley Arron, Max Arron, Anna Arron and VisaThere Products, Enc., individually and jointly have for a long
 Time past, and on information and belief are still infringing said
 Letters layout No. 3,293,405 by making, using and/or selling
 classwically heated footnear embodying Plaintiff's patented
 Lavoution within the District of this Court and elsewhere throughout the United States; and that they individually and/or jointly
 will continue to do so unless enjoined by this Court.
- 12. Each of the respective Defendants individually and/or jointly is further contributing to the infringement of said patent by urging others to make, use and/or sell electrically heated foothers embedying the inventions covered by said U. S. Letters retent No. 3,293,405 and/or the equivalent thereof within the Electrical of this Court and elsewhere throughout the United States, and each will continue to do so unless enjoined by this Court.
- 13. Plaintiffs have clearly applied the proper patent notices to their product as provided for by law; and Plaintiffs have

Therefor modified the respective Defendants orally and/or in writing that each is infringing and/or is contributing to the infringement of said Letters Patent.

ACCEPTONE, Plaintiffs pray:

- (c) For a decree adjudging said Letters Patent No. 3,293,405 to good and valid and that it has been infringed by the respective refendants;
- (b) That a writ of injunction be granted by this Court directed to the respective Defendants, individually and jointly, perpetually emjoining and restraining them, their officers, agents and employees from directly or indirectly infringing said Letters because 20. 3,293,405;
- (c) That the respective Defendants, individually and jointly, be decread to recount to Plaintiffs for all the gains, profit, or seventage realized by each of them from their infringement and unlawful use and practice of the invention patented in and by said letters Patent, and in addition to the said gains, profit end advantage to be so accounted for, that the damages sustained by the Plaintiffs as a result of said infringement be increased three fold;
- (d) That the Defendants individually and jointly be decreed to pay the costs herein including reasonable attorney's feed; and
- (a) That the Plaintiffs have such other and further relief as the circumstances of the case may warrant or justify, or as the Court may require.

You the Fewend Cause of Action

- 14. This cause of action is for misappropriation for secondarial advantage of Plaintiff Rophael J. Costanzo's includen, breach of confidential disclosure and unfair competition. Surjediction of this cause of action is conferred upon this Court by Title 23 U.S.C. Sections 1338 and 1391.
- is. Plaintiff, kaphael J. Costanzo, is a citizen of the state of Competitut and a resident of Bridgeport; and Plaintiff, Tarely Products Corporation, is a duly organized corporation organized under the laws of the State of Connecticut, and it uninstants an office at Pairfield, Connecticut.
- 10. Defendant, Stanley Arron, is a citizen of the State of Connectious and on information and belief resides at 3323 Old Town Loca in Bridgeport, Connecticut.
- 17. Defendant, Max Arxon, on information and belief is a estamen of the State of Connecticut and he resides at 3323 Old Town Road, Bridgeport, Connecticut.
- 13. Selendant, Arma Arren, on information and belief is a cicion of the State of Connecticut and she resides at 3323 old Town Acad, Bridgeport, Connecticut.
- 19. Visa-Therm Products, Inc. on information and belief is a corporation duly organized under the laws of the State of Communication and it maintains a regular and established place of Pasingus at 3023 Old Town Road, Bridgeport, Connecticut.
- 20. Plaintiff, Raphael J. Costanzo, is an inventor of electrical, electro-machanical, and electronic devices for which we has obtained numerous United States Patents of which the patent in large is one.

- 21. Defendent, Stenley Arron, has a background of sales
- 22. Prior to November 5, 1963, Plaintiff interested D. fendant Stanley Arren in a boat stove which Plaintiff Costanzo had developed, and Pefendant Stanley Arren led Plaintiff Costanzo to boliove that he was free to contract with Plaintiff Costanzo and to form a corporation to market such a boat stove.
- 23. On or about November 5, 1963, Plaintiff Costanzo and Ludendant Stanley arrow entered into a written agreement to form the a corporation to be called Stanzo Electronic Industries, Inc. the stock of which was to be equally divided and the sole purpose of which was to market and produce Plaintiff Costanzo's 'Cook-Ray' flowe incorporating Plaintiff Costanzo's patented electrical housing element, an unpatented ski device, and an unpatented characted 'Richtory Macker'; and limited rights to a "Plastic 2.1266."
- 224. The stock of Stanzo Electronic Industries, Inc. was never issued and/or delivered to Flaintiff Costanzo.
- 24. The terms of said agreement dated November 5, 1963 empressly excepted therefrom any shop right, interest, title or license in or to any other idea, invention, or patent developed or conceived by Plaintiff Costanzo without written consent to the contrary. The agreement contained the further provision that upon dissolution of Stanzo Electronic Industries, Inc. all right, title and interest to any patent and idea granted by Plaintiff Costanzo to the Stanzo Electronic Industries, Inc., were to revert to Plaintiff Costanzo.

- 15. Exceedintely upon the execution of the agreement of November 5, 1983, Plaintiff Costanuo was of the belief that defendant Stanley Arren had caused to be duly organized said "Stanmo Electronic Industries, Inc." under the laws of the State of Commerciaut, and Plaintiff Costanuo and Defendant Stanley Arron proceeded with the marketing and sales of the "Cook-Ray" stove and the devices specifically enumerated in and in accordance with said agreement of November 5, 1963.
- 25. Plaintiff Costanzo functioned as President and chief capinger in charge of manufacturing and production of Stanzo Diservonies Industries, Inc., and Defendant Stanley Arron functioned as acting vice president in charge of marketing and cales, and also as acting treasurer. As acting treasurer, Desendant Stanley Arron was solely responsible for all maters of dimensing, accounting and the filling of tem returns and reports for Stanzo Diservonic Industries, Inc.
- 17. Stanco Electronic Industries, Inc., after approximately three years of operation in accordance with the terms of said approximate of November 5, 1963, was dissolved by operation of law on or about September 23, 1963.
- 23. Sometime after the formation of Stanzo Electronic Industries, Inc. and prior to September 13, 1965 Plaintiff Costanzo conceived, developed and made an all-inclusive low-voltage battery-heated electric sock for which he filed an application for U. S. Letters Parent on September 13, 1965. U. S. Letters Patent in issue, was granted theorem on December 20, 1966.

- . After the formation of Stanzo Electronic Industries, Inc. and paler to Flaintiff Costanzo's filings for said patent application for his electric sock, Plaintiff Costanzo discosed in conficence to Defendant Stanley Arron the ideas and invention cancelled in Plaintiff Costanzo's electrically hested sock.
- Do. Finding Contains thereafter with the help of Defendant country arron couple to promote the sale of said electric sock, is using methally understood that the electric sock was not an an at of themse Electronic Industries, Inc., and that Defendant sourcey arron's capacity in the promotion of said electric sock was that of a broker, for which he would receive a broker's accounted in the event he was successful in negotiating a sale of imposite of the invention embodied in said electric sock.
- of the country Arron, the latter confidentially acquired much knowledge and technical know how with respect to the manufacture of and heated book.
- 22. Deving the year of 1963 Plaintiff Costanzo and Defendant sampley arrow as his egent and broker confidentially disclosed the published samples of Plaintiff Costanzo's electric sock invention to several incoresced parties including, among others, Seneca Maissing Mills, Shelton Hosiery, and Kayser-Roth.
- 35. Phaintiff Costanto on his own behalf during this time also conficentially disclosed his invention of the electrically beased seek to others.
- 24. On December 27, 1985 Plaintiff Costanzo executed an exclusive license for the manufacture and sale of said heated socks to Plaintiff Timely Products Corporation.

23. On or about December 28, 1965 Plaintiff Costanzo revoked Defendant Stanley Arron's authority to promote Plaintiff Costanzo's invention in the electric sock.

36. On information and belief Defendent Stanley Arron, in lare 1963 or carly 1966, in his own name and unknown to Plaintiff Contained and in violation of Plaintiff Costanzo's property rights negociated a contract for the sale and license of said Plaintiff Costanzo's electric sock invention with Seneca Knitting Mills; and as a result Defendant Stanley Arron illegally obtained and converced for his own use all profits and gain resulting from such concract.

- 27. On or about November 11, 1966, Defendant Stanley Arron and Sefendants Max Arron and Anna Arron organized the Defendant componention Visa-Therm Products, Inc. as a device and conspiracy to added Inther appropriation and unlawful exploitation of Plaintiff Costanto's invention in and to his electric sock; and and Pelandants individually and jointly are continuing the manappropriation of Plaintiff Costanto's electric sock invention.
- 23. The respective Defendants, by their respective unlewful appropriation of Plaintiff Costanzo's invention and their continued willful disregard for Plaintiff Costanzo's rights in and to his invention, are unfairly compating with and interfering with Plaintiff Costanzo's right to exclusively license to Plaintiff Timely Products Corporation the right to make, use and sell the electrically heated sock embodying his invention.

WELLEGO, Plaintiff Rephael J. Costanzo prays:

- (a) For an injunction permanently enjoining the respective assendants from unlawfully making, using or selling electrically houted cooks embodying the invention and know how which Plaintiff Coutants disclosed in confidence to Defendant Stanley Arron;
- (5) That the Defendants individually and/or jointly pay to Plaintiff Costanto damages in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars;
- (c) That the respective Defendants pay the cost of this action including reasonable attorney's fees;
- (d) That Plaintiff Costanzo have such other relief as the circumstances of this case permit or justify, or as the Court may require.

For the Third Course of Action

- 3). This cause of action is for unfair competition and jumisdiction is conferred upon this Court by Title 35 U.S.C. Sections 1303 and 1391.
- 43. Plaintiff, Timely Products Corporation, is a duly organized corporation in accordance with the laws of the State of Connecticut and it maintains an office at Fairfield, Connecticut.
- 41. Defendant, Stanley Arron, is a citizen of the State of Connecticut and he resides in Bridgeport, Connecticut.
- 42. Plaintiff, Alphael J. Costanzo, is the inventor of a movel low-voltage bettery-operated electric sock for which he obtained U. S. Letters Patent No. 3,293,405, which was granted on Disconter 20, 1955.
- 43. The development of the electric sock by Plaintiff Costanzo

a comparation organized to manufacture and sell an electric boat cove invented by Plaintiff Costanzo. Stanzo Electronic industries, Inc. was organized by Plaintiff Costanzo and Defendant Costanzo arron by virtue of an agreement dated November 5, 1963, and this agreement expressly excluded the electric sock invention.

- Tion's association in Stanzo Electronic Industries, Inc., Plaintiff costomes and Refendant Stanley Arron attempted to also promote and ilectron the electric sock invention. Mowever, it was understood that Defendant Stanley Arron was to function as a broker for -laintiff Costomes rather than as a co-owner of the electric sock invention and that he was to receive a broker's commission in the quest he was successful in negotiating a license or sale of the electric sock clearing specialists.
- 45. During this association Plaintiff Costenzo confidentially imported to Defendent Stanley Arron Valuable know how and technical information as to the manufacture and production of the electrically heated seek invention.
- 40. On December 27, 1069 Plaintiff Timely Products Corporation by written agreement with Plaintiff Costanzo acquired the "exclusive right and licence to make, use and sell" Plaintiff's electrically agated spek and any Emprovements thereto.
- 47. Ložendant Stanley Arron, contrary to any agreement with clountiff Costanzo, and in further violation of a fiduciary relationship, withheld information which he was otherwise obligated to disclose to Plaintiff Costanzo pertaining to the licensing and/or

manufacture and sale of electrically heated socks embodying flaintiff Costanzo's invention by others, and which electric sock invention constituted the subject matter of the exclusive license agraement between Plaintiff Timely Products Corporation and Plaintiff Raphael J. Costanzo.

- 45. Percentant Stanley Arron, in further disregard of any cuty and fiduciary obligation to disclose information concerning the licensing and manufacture of heated socks embodying Plaintiff Costumzo's invention by others, and for which he was directly responsible, formed with Defendant Max Arron and Defendant Anna arron the Defendant corporation, Visa-Therm Products, Inc. to manufacture and sell electrically heated socks embodying Plaintiff Costanzo's invention in issue in further violation of Plaintiff Costanzo's invention in issue in further violation of Plaintiff Costanzo's property right and Plaintiff Timely Products Corporation's exclusive license rights. In so doing Defendant Stanley Arron is utilizing confidential information and technical know how Laparted to him during a fiduciary relationship and of Walch he is not entitled to make use for his own behalf.
- 49. Desendants Max Arron and Arma Arron knew or should have known that Desendant Stanley Arron was obligated to maintain the information of the electric heated sock confidential and not otherwise entitled to use said information and invention for his own and/or their own profit and gain.
- 50. The respective Defendants individually and jointly have thereby unlawfully interfered with and are unfairly competing with rightiff Timely Products Corporation which by written agreement with Plaintiff Costanzo has the exclusive right and license to

make, use and sell heated socks in accordance with Plaintiff Costanzo's Invention.

WELLEFORE, Plaintiff Timoly Products Corporation prays:

- (a) For an injunction for permanently enjoining the respective Defendants from unlawfully making, using and/or selling electrically heated socks which limits in any manner the exclusive license grant Timely Products Corporation has acquired in good faith from Plaintiff Raphael J. Costanzo:
- (b) That the Defendants, individually and jointly, pay to Flaintiff Timely Products Corporation damages in the sum of Two Hendred Fifty Thousand (\$250,000.00) Dollars by reason of Defendants' acts in violation of Plaintiff Timely Products Corporation's exclusive rights as a result of their unfair acts of competition;
- (c) That the respective Defendants pay the costs herein including attorney's feed; and
- (d) That Plaintiff Timely Products Corporation have such other and further relief as the circumstances of the case may warrant or justify or as the Court may require.

FOR THE FOURTH CAUSE OF ACTION

- 51. This action arises under the provisions of the Sherman Act 15 USC, Sect. 1 to 7, the Robinson-Patman Act. 49 Stat. 1526 (15 USC 13) and the Clayton Act 38 Stat. 731,737 (15 USC Sects. 15 & 26). Jurisdiction is conferred on this Court by 1337 of Title 23 USC.
- 52. Plaintiff, Timely Products Corporation, is incorporated under the Laws of the State of Connecticut, and it is in the business of manufacturing and selling low-voltage, battery heated, electric socks.
- 53. Defendants, Stanley Arron, Max Arron, and Anna Arron respectively are citizens of the State of Connecticut and each resides in Bridgeport, Connecticut.
- 54. Defendant, Visa Therm Products, Inc., is a corporation chartered under the Laws of the State of Connecticut and organized by the individual defendants.
- 55. Defendant: jointly are in the business of manufacturing and salling low-voltage, electrically heated socks similar in function, use and appearance to the socks manufactured by the Plaintiffs, Timely Products Corporation.

- 25. Plaintiff, Timely Products Corporation and the respective Defendants are competitors, each engaging in interstate commerce.

 57. The manufacture and sale of the low-voltage battery heated seems is essentially seasonal business, the season commencing on or about January of each year and ending on or about the following Cotober of each year.
- 50. During the current season, Defendants have engaged in a campaign of offering and/or solling electrically heated socks to collected customers of Plaintiff at a price substantially lower than that charged to Defendants' regularly established accounts, less trade discounts, bonuses and other inducements such as advertising, etc. Their reduced prices reflected a substantially challer percentage of mark-up over manufacturing and selling cost than in previous years and/or relative to those sales to their regularly established accounts. These prices were unreasonably low and were and are being offered to selected customers, primarily Plaintiff's established customers, for the purpose of destroying competition and eliminating competition, including Plaintiff, Timely Products Corporation. Defendants, in selling their electric sock at such unreasonably low prices to selected customers with the purpose and intent of decroying competition and eliminating one or more competitors, as aforesaid, has violated title 15 USC 13.
- 59. As evidenced by attached Defendants' February 1, 1970 price list, Exhibit A, Defendants' list the price for their respective electric socks as ranging between \$4.50 and \$5.25 per pair, depending on model and place of shipment. Attached Exhibit B evidences Defendants' customary trade discount and freight ellowance normally quoted to their regular or prospective customers.

- co. Defendants sell their regular customers and accounts at the current prices and allowances as evidenced by attached Exhibits A and B.
- 61. Plaintiffs, Timely Products Corporation, regularly sell their accounts electrically heated socks at a cost ranging between \$4.16 and \$4.50 per pair, depending on quantity and established trade allowances.
- C2. Prior to the current season Plaintiff, Timely Products Corporation developed and enjoyed a substantial and profitable electric book business. Over the years Plaintiff, Timely Products Corporation, has developed as a sizable account the Stem Distributing Company of Maple Reights, Chio. During the 1969 season this account purchased approximately \$10,000.00 of heated socks at an average cost per pair of \$4.16. During the current season Defendants quoted said Stem Distributors a price of \$3.75 per pair of socks, a price substantially less than the Defendants have quoted their regular established accounts or other propsective accounts, as evidenced by attached Exhibits A and B.
- 63. As a result of Defendants' discriminating price offer,
 Plaintiff, Timely Products Corporation lost the Stem Distributing
 Company account to Defendants.
- 64. Clark Wholesale Company of Akron, Ohio, another of Plainmiff's accounts placed its 1970 order with the Plaintiff for fall delivery at a unit price of \$4.39 per pair.
- 55. Defendants quoted said Clark Wholesale Company a price of \$3.96 per pair, coupled with an offer to pay for advertising. As a result of Defendants' discriminating price tactics, this account cancelled its order with Plaintiff, Timely Products Corporation.

- 55. Jos, The Motorists' Friend, of Pennsylvania, another of Plaintiff's, Timely Products, accounts cancelled its 1970 order with Plaintiff because Defendants quoted a price of \$3.96 per pair, a price lower than that charged to Defendants' regularly established accounts.
- C7. Oxford Sales of Philadelphia, Pa., another of Plaintiff's, Timely Products Corporation, accounts had purchased electrically because socks from Plaintiff for three consecutive seasons; and this account was lost to Defendants because of the discriminating pricing tactics being practised by them this current season.
- Corporation, which are directly attributed to Defendants' discriminating pricing tactics which Defendants are specifically directing toward Plaintiff's established accounts.
- CO. Plaintiff, Timely Products Corporation, as a result of the foregoing, has been demaged in that it has been deprived of the carnings and profits which it would otherwise have made but for Defendants' unlawful practises. Plaintiff, Timely Products Corporation, has therefore sustained damages in the excess of \$40,000.00 and is entitled to recover such damages threefold under 15 USC 15.
- 70. Defendants have conspired with others to eliminate competition by price discriminating tactics hereandabove alleged in violation of the Sherman Act 15 USC Sect. 1 to 7.
- 71. The Defendants threaten and intend to continue to offer and well electrically heated socks at said unreasonable low prices.

 For the purpose of destroying competition and eliminating competi-

ters, including Plaintiff, Timely Products Corporation. Unless telemeants are permanently enjoined from continuing such acts and practices, the Plaintiffs will suffer further losses, irreparable damge, and complete loss of their business and good wall.

W. TRIFCRE Plaintiffs demand judgement.

- 1. For damages in excess of \$40,000.00 and for treble
- 2. That the Defendants, their agents, and servants be enjoined during the pending of this action, and permanently from selling electrically heated socks at unreasonably low prices for the purpose of climinating competitors.
- 3. That the Defendants pay to Plaintiff the cost of this action including reasonable attorney's fees.
- 4. Such other relief as the Court may deem just and proper.

Arthur T. Fattibene Attorney for Plaintiffs 2480 Post Road Fairfield, Connecticut 06430 Tel.: 255-4400

To: Edward F. Kunin 255 Main Street Bridgeport, Connecticut

> Ernest Junkins 945 Main Street Lridgeport, Connecticut



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MANUFACTURE OF ELECTRICALLY-HEAVED PROTECTIVE CLOTHING ALLO EQUE MARTETON USE HITTHE COLDEST MEATHER

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PRICE LIST - PEBRUARY 1, 1970

	SOCKS . PA	IMUM CKING	MASTER FACKING	SUGG. RETAIL	DIRECT/ DROP SHIP	DIST/ JCHEER
×	VARM SCKS-Grey/Hed Top 2 DozesTRETCH-Solid, 11" High 2 " . STRETCH-Lt Grey/Red,14" 2 " .	12 "	11 400	9.95 9.95 9.95	\$ 4.97 4.97 5.25	\$ 4.50 4.50 4.75
7	Ladies Vest "	14	0 Ea-24 lbs	19.95 19.95 19.95 25.00 29.50	9.97 11.00 10.00 11.25	8.50 9.50 9.00
4	MITTENS ADIRO/ELECTRIC 12 Pr- HEATSULATOR 12 Pr-	10 lbs		13.55	6.75	6.0.0 7.75
	SUITS HEATSULATOR- SEPARATE HOOD " - CONCEALED HOOD CAPES	No minim	um quantity	87.50 85.00	45.50 44.50	42.50 41.50
	FCCTEALL "PROF MODEL STADIUM/SPECTATOR BATTERIES & CHARGERS	Team Quar	ntities um quantity	90.00	55.00	40.00
	SET- 1 Two cell Charger & 2 No NICKEL CALMIUM HATTERIES, #4 I TEAM SIZE CHARGER-Charge up to TERMS- 1% 10 Days, Net 30 Days	o 16 cells	at. one time	24.50 8.00 135.00	14.85 5.00 114.75	14.85 5.00 114.75

TERMS- 1% 10 Days, Net 30 Days, FOB Bridgeport, Conn.

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HOW TO ORDER - SIZE SCALE GUIDE

WARM SOKS- 4 Small, 12 Medium. 8 Large for 24 Pair Carton
" " 24 " ,72 " ,48 " " 1144 " Scale
STRETCH SOKS- In multiples of 9 Pr 10-13 & 3 Pr 9-11 per Doz.
MEN'S VESTS - " " 1 Sml.5 Med.4 Lge.1 XL " "
LADIES " - " " 2 " .7 " .3 "
ASTRO MITTENS- " 8 Pr Rogular, 4 Large " "



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July 24,1970

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EANJAX ENTERPHISES, INC 2720 West Henrietta Hoad Hochetter, N.Y. 14623

ATTH OF- R. Ferrari

Dear Mr Ferrari:

Attached is literature and price as requested in your letter of July 22.

We have a full freight Allowance on orders of ,300.00.
Seasonal dating provides for a Duc date of Nov 10th with 15 Discount on pre season shipments. Jobber/Distributor prices include all allowances for Advertising and Volume.

We had an early buy deal of 1 Dozen WARK SORS as a Lonus for each 12 dozen purchased. This expired on May 30. However, as you did not seem to know about it, we will extend it for you until July 31.

A basic Distributor program consists of three items. SOCKS, ASTRO/ELECTRIC WITTENS, and ASTRO/ELECTRIC VESTS.

Looking forward to receiving your opening orders, I am

Warmly Yours

VISA THEN PRODUCTS

tanley Arron Posident

SA/hz C-Konikoff UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

TIMELEY PRODUCTS CORPORATION, ET AL,

Plaintiffs.

VS.

Civil Action No. 11864

STANLEY ARRON, ET AL.

Defendants

STANLEY ARRON,

Counter-plaintiff,

vs.

TIMELY PRODUCTS CORPORATION, BENJAMIN M. HINES AND LOIS D. HINES,

Counter-defendants

DEFENDANTS' AMENDED ANSWER AND COUNTERCLAIMS

Now come the defendants, Stanley Arron, Max Arron, Anna Arron and Visa-Therm Products, Inc., by and through their attorneys, and in answer to the Second Amended Complaint of the plaintiffs, Timely Products Corporation and Raphael J. Costanzo, aver as follows:

Answer to First Cause of Action

1. The defendants admit that the First Cause of Action is for infringement of patent and admit that jurisdiction on patent cases arises under Titles 28 and 35 of the U. S. C.. As to the remaining portions of paragraph 1, the defendants have insufficient knowledge and leave the plaintiffs to their proof.

EDWARD F KUNIN

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- 2. As to paragraph 2, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.
- 3. As to paragraph 3 of the First Cause of Action the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.
 - 4. Paragraph 4 is admitted.
 - 5. Paragraph 5 is admitted.
 - 6. Paragraph 6 is admitted.
- 7. Paragraph 7 is admitted, except the defendant VisaTherm Products, Inc. maintains a place of business at 247 Madison
 Avenue, Bridgeport, Connecticut.
 - 8. Paragraph 8 is admitted.
- 9. As to paragraph 9 of the First Cause of Action, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.
- 10. As to paragraph 10 of the First Cause of Action, the defendants admit that Raphael J. Costanzo was issued U. S. Letter Patent No. 3,293,405. As to the balance of paragraph 10, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.
 - 11. Paragraph 11 of the First Cause of Action is denied.
 - 12. Paragraph 12 of the First Cause of Action is denied.
- 13. As to paragraph 13 of the First Cause of Action, it is admitted that the plaintiffs have communicated with the defendants. As to the balance of the paragraph the defendants have in-

sufficient knowledge to form a belief and leave the plaintiffs to their proof.

Answer to Second Cause of Action

- 14. Paragraph 14 of the Second Cause of Action is denied.
- 15. As to paragraph 15 of the Second Cause of Action, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.
- 16. Paragraph 16 of the Second Cause of Action is admitted.
- 17. Paragraph 17 of the Second Cause of Action is admitted.
- 18. Paragraph 18 of the Second Cause of Action is admitted.
- 19. Paragraph 19 of the Second Cause of Action is admitted, except the defendant Visa-Therm Products, Inc. maintains a place of business at 247 Madison Avenue, Bridgeport, Connecticut.
- 20. As to paragraph 20 of the Second Cause of Action, the defendants have no knowledge and leave the plaintiffs to their proof.
- 21. Paragraph 21 of the Second Cause of Action is admitted.
- 22. Paragraph 22 of the Second Cause of Action is admitted.
- 23. As to paragraph 23 of the Second Cause of Action, it is admitted that on or about November 5, 1963, the plaintiff Costanzo and the defendant Stanley Arron, entered into a written

agreement to form a corporation called Stanzo Electronics Industries, Incorporated, the stock of which was to be equally divided. The balance of said paragraph is denied.

- 23. (a) As to paragraph 23(a) of the Second Cause of Action, it is admitted that no stock in Stanzo Electronic Industries, Incorporated was ever issued to anyone and that the corporation papers were never completed.
 - 24. Paragraph 24 of the Second Cause of Action is denied
- 25. As to paragraph 25 of the Second Cause of Action, it is admitted that the plaintiff Costanzo and the defendant Stanley Arron proceeded with the marketing and sales of the "cook-ray" stove. The balance of said paragraph is denied.
- 26. As to paragraph 26 of the Second Cause of Action, it is admitted that Costanzo was the President of Stanzo Electronic. Industries, Incorporated, and that Stanley Arron was the Vice-President. The balance of said paragraph is denied.
 - 27. Paragraph 27 of the Second Cause of Action is denied.
- 28. As to paragraph 28, it is admitted that U. S. Letters Patent No. 3,293,405 was granted on December 20, 1966 to the plaintiff, Raphael Costanzo. The balance of said paragraph is denied.
- 29. Paragraph 29 of the Second Cause of Action is denied.
- 30. As to paragraph 30 of the Second Cause of Action, it is admitted that Costanzo and Stanley Arron jointly sought to promote the sale of an electric sock. The balance of said paragraph is denied.

- 31. Paragraph 31 of the Second Cause of Action is denied.
- 32. As to paragraph 32 of the Second Cause of Action, it is admitted that Stanley Arron, with an intent to promote an electric sock, contacted several interested parties including, among others, Seneca Knitting Mills, Shelton Hosiery, and Kayser-Roth. The balance of said paragraph is denied.
- 33. As to paragraph 33 of the Second Cause of Action, the defendants have no knowledge and leave the plaintiffs to their proof.
- 34. As to paragraph 34 of the Second Cause of Action, the defendants have no knowledge and leave the plaintiffs to their proof.
 - 35. Paragraph 35 of the Second Cause of Action is denied.
 - 36. Paragraph 36 of the Second Cause of Action is denied.
- 37. As to paragraph 37, it is admitted that on or about November 11, 1966, the defendant, Stanley Arron, acting alone, caused a corporation to be formed, known as Visa-Therm Products, Inc.. The balance of said paragraph is denied.
 - 38. Paragraph 38 of the Second Cause of Action is denied.

 Answer to the Third Cause of Action
 - 39. Paragraph 39 of the Third Cause of Action is denied.
- 40. As to paragraph 40 of the Third Cause of Action, the defendants have no knowledge and leave the plaintiffs to their proof.
 - 41. Paragraph 41 of the Third Cause of Action is admitted.
- 42. As to paragraph 42, it is admitted that U. S. Letters
 Patent No. 3,293,405 was granted to the plaintiff, Raphael J. Cos-

tanzo on December 20, 1966. The balance of said paragraph is denied.

- 43. As to paragraph 43 of the Third Cause of Action, it is admitted that Stanzo Electronic Industries, Incorporated, was organized by the plaintiff Costanzo and the defendant, Stanley Arron. The balance of said paragraph is denied.
- 44. As to paragraph 44 of the Third Cause of Action, it is admitted that the plaintiff Costanzo and the defendant, Stanley Arron, attempted to jointly market and promote an electric sock. The balance of said paragraph is denied.
 - 45. Paragraph 45 of the Third Cause of Action is denied.
- 46. As to paragraph 46 of the Third Cause of Action the defendants have no knowledge and leave the plaintiffs to their proof.
 - 47. Paragraph 47 of the Third Cause of Action is denied.
- 48. As to paragraph 48 of the Third Cause of Action, it is admitted that Stanley Arron, acting alone, formed a corporation known as Visa-Therm Products, Inc.. The balance of said paragraph is denied.
 - 49. Paragraph 49 of the Third Cause of Action is denied.
 - 50. Paragraph 50 of the Third Cause of Action is denied.

Answer to the Fourth Cause of Action

- 51. Paragraph 51 of the Fourth Cause of Action is denied.
- 52. As to paragraph 52 of the Fourth Cause of Action, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.

- 53. Paragraph 53 of the Fourth Cause of Action is admitted.
- 54. Paragraph 54 of the Fourth Cause of Action is admitted except insofar as it alleges Visa-Therm Products, Inc. was formed by the individual defendants. It was formed by Stanley Arron acting alone.
- 55. Paragraph 55 of the Fourth Cause of Action is denied except it is admitted that the defendant Visa-Therm Products, Inc. is in the business of manufacturing and selling low-voltage electrically heated socks.
- 56. Paragraph 56 of the Fourth Cause of Action is denied except it is admitted that the defendant Visa-Therm Products, Inc. and the plaintiff Timely Products Corporation compete.
- 57. Paragraph 57 of the Fourth Cause of Action is denied except it is admitted that the use of electrically heated socks is usually restricted to the cooler months.
- 58. Paragraph 58 of the Fourth Cause of Action is denied.
- 59. Paragraph 59 of the Fourth Cause of Action is denied except the defendant Visa-Therm Products, Inc. admits Exhibit
 A was a price list circulated by it and Exhibit B is a letter sent
 by the defendant Visa-Therm Products, Inc..
- 60. Paragraph 60 of the Fourth Cause of Action is denied.
- 61.---62. As to Paragraph 61 and Paragraph 62 of the Fourth Cause of Action, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.

- 63. Paragraph 63 of the Fourth Cause of Action is denied except defendant Visa-Therm Products, Inc. admits it sells products to Stem Distributing Company.
- 64. As to Paragraph 64 of the Fourth Cause of Action, the defendants have insufficient knowledge to form a belief and leave the plaintiffs to their proof.
- 65. Paragraph 65 of the Fourth Cause of Action is denied except it is admitted that defendant Visa-Therm Products, Inc. offered socks to Clark Wholesale Company in accordance with its uniform pricing structure at the time of the offer.
- 66. Paragraph 66 of the Fourth Cause of Action is denied except defendant Visa-Therm Products, Inc. admits it sold socks to Joe, The Motorists' Friend of Pennsylvania, at prices quoted in accordance with its pricing structure at that time.
- 67. Paragraph 67 of the Fourth Cause of Action is denied except the defendant Visa-Therm Products, Inc. admits it sells socks to Oxford Sales of Philadelphia, Pa..
- 68. thru 70. Paragraphs 68, 69 and 70 of the Fourth Cause of Action are denied.
- 71. Paragraph 71 of the Fourth Cause of Action is denied except the defendant Visa-Therm Products, Inc. admits it will continue in the business of selling electrically heated socks.

COUNTERCLAIM

Counterclaim to the First Cause of Action

As to his Counterclaim against the plaintiffs and as an affirmative answer to the complaint, the defendant Stænley

EDWARD F KUNIN ATTORNEY AT LAW Arron and Visa-Therm Products, Inc., allege and aver as follows:

judgment under the Federal Declaratory Judgment Act, Judicial Code, Chapter 151, Sections 2201, and 2202, arising from an actual controversy existing between the plaintiffs and the defendants as to the alleged validity, infringement and enforceability of Costanzo Patent No. 3,293,405, asserted by the plaintiffs in their Complaint. This Counterclaim scoke a declaratory judgment adjudging Costanzo Patent No. 3,293,405 to be invalid and/or not infringed by any electrically heated footwear made or sold by the defendant, Visa-Therm Products, Inc., and further to be unenforceable against the defendants and those in privity therewith.

necessarily placed upon the patent claims during the prosecution of the Costanzo patent application, and by reason of the admissions and representations therein made, by or on behalf of Costanzo in order to induce the grant of the patent in suit, plaintiffs are estopped from claiming for said patent any monopolistic scope which would cover and include any and all electrically heated footwear and/or parts thereof made, used or sold by the defendants, Stanley Arron and/or Visa-Therm Products, herein and their privies.

102. Costanzo Patent No. 3,293,405 is invalid, void and unonforceable against defendants Stanley Arron and VicaTherm Products Inc., for the reason that it fails to comply with

OCHORDON NON-HOUT :

the conditions of patentability required for a patent by the provisions of Title 35 U.S.C. including but not being limited to Sections 102 and 103.

and unonforceable against defendants for the reason that it fails to comply with the conditions of patentability required for a patent by the provisions of Title 35 U.S.C. Section 112.

104. Defendants do not infringe any valid claim of the Costanso patent in this suit.

WHEREFORE, THE DEPENDANTS, STANLEY ARRON and VISA-THERM PRODUCTS, INC. PRAY:

- For a declaratory judgment holding Costanzo Patent No. 3,293,405 to be invalid, void, not infringed upon and/or unenforceable at law.
- 2. For a permanent injunction restraining the plaintiffs and any one in privity with the plaintiffs, from bringing or prosecuting any action at law or suit in equity charging infringement of the Contango patent here in suit against the defendants and others in privity therewith and from interfering directly or indirectly with the business activities of the defendants and the privies.
- 3. For all damages that the defendants have sustained as a result of the plaintiffs' act in wrongfully bringing this action and that the Complaint be dismissed with costs charged against the plaintiffs and that the defendants have and recover from the plaintiffs reasonable attorneys' fees for this action most wrongfully instituted.
 - 4. For such other and further relief as is just

and equitable under the circumstances.

Counterclaim to the Second and Third Causes of Action:

For their Counterclaims against the plaintiffs and as an affirmative Answer to the Complaint, the defendants Stanley Arron and Visa-Therm Products Inc. allege and aver as follows:

105. This cause of action is for misappropriation for commercial advantage of the defendants, Stanley Arron's idea, breach of confidential disclosure and unfair competition.

Jurisdiction of this cause of action on this counterclaim is conferred upon this court by Title 28 U.S.C. Sections 1338.

106. The Defendant, Stanley Arron and the Plaintiff, Raphael J. Costanzo, sometime on and after November 5, 1963 were jointly associated with a corporation owned by them known as Stanzo Electronic Industries, Inc., which corporation was in the process of attempting to market certain items on which the Plaintiff Costanzo held patent.

any of the items on which Costanzo had patents. However, while the parties were working together, the defendant, Stanley Arron conceived the idea of producing and marketing an electric sock and disclosed said idea to the plaintiff, Raphael J. Costanzo. Prior to this disclosure by the defendant, Stanley Arron, the plaintiff, Raphael J. Costanzo had never thought of nor given any consideration to the possible marketing or manufacturing of an electric sock.

108. Thereafter, the Plaintiff, Costanzo and the Defendant, Stanley Arron, worked jointly as partners or joint

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venturors to premote the sale of an electric sock and contacted as joint venturors several interested parties including, among others. Seneca Knitting Mills, Shelton Hosiery and Kayser-Roth.

109. The parties were unsuccessful, while working togother in marketing an electric cock and ultimately parted their business relationships. Thereafter, Costanzo misappropriated the idea of the defendant, Stanley Arron, to market an electric sock and on his own and as a dovice and conspiracy to appropriate and unlawfully exploit the defendant, Stanley Arrons! ,idea, the plaintiff, Costanzo, did develop a mothod of electrically heating a cock and did obtain a patent thereon, and further licenced the plaintiff, Timely Products Corporation to market said sock. Said sock differs from the electric sock developed by the defendant, Stanley Arron, and marketed by the defendant, Visa-Therm Products, Inc. but the development of the sock by the plaintiff, Costanzo and the misappropriation of the ideas of the defendant, Stanley Arron by the plaintiff, Raphael Costanzo, amounts to unfair competition, a breach of a confidential relationship and have resulted in damages and injuries to the Defendants, Stanley Arron and to Visa-Therm Products, Inc., a corporation licensed by the defendant, Stanley Arron, to market his electric sock.

110. At all times montioned herein, the plaintiff, Timely Products Corporation, was and is aware that the idea for an electric sock was conceived by the defendant, Stanley Arron.

111. On and prior to December 30, 1966, despite the fact that they knew that the sock manufactured by Visa-Therm Products Incorporated did not in any way infringe on the patent

issued to Costanzo. The Plaintiffs, Raphael Costanzo and Timely Products Corporation caused libelous and slanderous statements to be made inferring that Stanley Arron and Visa-Therm Products, Inc. were guilty of unfair competition and unlawful appropriation of the Costanzo idea. Said statements were made in letters written to customers of Visa-Therm Products, Inc. in an expressed effort to destroy the business of Visa-Therm Products, Inc.

112. In further efforts to destroy the products of Visa-Thorm Products, Inc. the plaintiffs, Raphael Costanzo and Timely Products Corporation caused a letter to be written to the bank which Visa-Thorm Products, Inc. did business with. Said letter was written in a sole attempt to destroy the credit standing of Visa-Thorm Products Inc. and Stanley Arron, to cut off credit extension and to destroy the business of Visa-Thorm Products Inc.

113. Said letters referred to above went beyond the scope of a letter written to advise of a potential patent claim and were intended to destroy and harm the reputation of Stanley Arron and Visa-Therm Products, Inc. and have caused the defendants, Stanley Arron and Visa-Therm Products, Inc. to suffer substantial losses.

WHEREFORE, THE DEFENDANTS, STANLEY ARRON and VISA-THERM PRODUCTS, INC. PRAY:

(a) For an injunction permanently enjoining the plaintiffs from unlawfully making, using and/or selling electrically heated socks embodying the ideas which the defendant, Stanley Arron disclosed in confidence to the plaintiff, Costanzo.

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- (b) For In injunction permanently enjoining the plaintiff, Raphael Costanzo and Timely Products Corporation and their representatives from communicating with customers and people with whom Visa-Therm Products Inc. and Stanley Arron have business relationships in an attempt to destroy the business of Visa-Therm Products Inc. and Stanley Arron.
- (c) That the plaintiffs, individually and/or jointly, pay to the defendants, Stanley Arron and Visa-Therm Products, Inc. damages in the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars.
- (d) That the respective plaintiffs pay the costs of this action including reasonable attorney's fees.
- (e) That the defendants, Stanley J. Arron and VisaTherm Products, Inc., have such other relief as the circumstances
 of this case may permit or justify or as the Court may require.

COUNTERCLAIM

- 114. This cause of action is for patent infringement under the laws of the United States. Jurisdiction is conferred by Title 35 U.S.C. Sections 271, 281, 282, 283, 284, 285, and 286 and by Title 28 U.S.C. Sections 1338, 1391 and 1400(b). This counterclaim is further permitted under Rule 13 of the Rules of Civil Procedure.
- 115. The defendant, Stanley Arron, is a citizen of the State of Connecticut and he resides in Bridgeport, Connecticut.
- 116. On July 9, 1968 United States Letters Patent No.

 3,392,264 were duly and legally issued to the defendant, Stanley

 Arron, for an invention in electrically heated footwear; and since
 that date the defendant, Stanley Arron, has been and still is the

owner of said letter patent.

- 117. The defendant, Stanley Arron, through the defendant, Visa-Therm Products, Incorporated, makes, uses and sells the electrically heated footwear disclosed and claimed in said patent.
- phael J. Costanzo, and the counter-defendants, Benjamin M. Hines and Lois D. Hines, on information and belief, individually and jointly are infringing said Letters Patent #3,392,264 by making, using and/or selling electrically heated footwear embodying defendant Stanley Arron's patented invention within the district of this court and elsewhere, and that they will continue to do so unless enjoined by this court.
- phael J. Costanzo, and the counter-defendants, Benjamin M. Hines and Lois D. Hines, individually and jointly, are, upon information and belief, further contributing to the infringement of said patent by urging others to make, use and/or sell electrically heated footwear embodying the inventions covered by said U. S. Letters Patent #3,392,264, or the equivalent thereof, within the district of this court and elsewhere throught the United States, and each will continue to do so unless enjoined by this court.
- 170. The defendants, Stanley Arron and Visa Therm Products, Incorporated, have placed the required statutory notice on electrically heated footwear manufactured and sold by them under said letters patent and have notified plaintiffs in writing of said infringement.

WHEREFORE, the defendants pray:

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ATTORNET AT LAW
SEE MAIN STREET
SEIDGEFORT, CONNECTICUT SEEDS

- (a) For a decree adjudging said Letters Patent #3,392,264 good and valid and that it has been infringed by the respective plaintiffs and counter-defendants;
- (b) That a writ of injunction be granted by this Court directed to the respective plaintiffs and counter-defendants, individually and jointly, perpetually enjoining and restraining them, their officers, agents and employees, from directly or indirectly infringing said Letters Patent #3,392,264;
- (c) That the respective plaintiffs and counter-defendants, individually and jointly, be decreed to account to the defendants for all the gains, profit, or advantage realized by each
 of them from their infringement and unlawful use and practice of
 the invention patented in and by said letters patent, and in addition to the said gains, profit and advantage to be accounted for
 that the damages sustained by the defendants as a result of said
 infringement be increased threefold;
- (d) That the plaintiffs and counter-defendants, individually and jointly, be decreed to pay the costs herein, including reasonable attorneys' fees; and
- (e) That the defendants have such other and further relief as the circumstances of the case may warrant or justify, or as the court may require.

J COUNTERCLAIM

under the laws of the United States. Jurisdiction is conferred by Title 35 U.S.C. Sections 271, 281, 282, 283, 284, 285, and 286 and by Title 28 U.S.C. Sections 1338, 1391 and 1400(b). This counter-

claim is further permitted under Rule 13 of the Rules of Civil Procedure.

- 122. The defendant, Stanley Arron, is a citizen of the State of Connecticut and he resides in Bridgeport, Connecticut.
- 123. On August 18, 1970 United States Letters Patent No. 3,524,965 were duly and legally issued to the defendant Stanley Arron for an invention of an electric heating element for apparel and since that date the defendant Stanley Arron has been, and still is, the owner of said letters patent.
- 124. The defendant Stanley Arron, through the defendant Visa-Therm Products, Incorporated, makes, uses and sells electric heating elements for apparel.
- Raphael J. Costanzo, and the counter-defendants, Benjamin M. Hines and Lois D. Hines, on information and belief, individually and jointly, are infringing said Letters Patent #3,524,965 by making, using and/or selling an electric heating element for apparel embodying defendant Stanley Arron's patented invention within the district of this court and elsewhere, and that they will continue to do so unless enjoined by this court.
- phael J. Costanzo, and the Counter-defendants, Benjamin M. Hines and Lois D. Hines, individually and jointly, are, upon information and belief, further contributing to the infringement of said patent by unding others to make, use and/or sell an electric heating element for apparel embodying the invention covered by said U. S. Letters Patent #3,524,965, or the equivalent thereof, within the

district of this court and elsewhere throughout the United States, and each will continue to do so unless enjoined by this court.

127. The defendants, Stanley Arron and Visa-Therm Products, Inc., have placed the required statutory notice on electric heating elements for apparel manufactured and sold by them under said Letters Patent #3,524,965.

WHEREFORE, the defendants pray:

- (a) For a decree adjudging said Letters Patent #3,524,965 good and valid and that it has been infringed by the respective plaintiffs and counter-defendants;
- (b) That a writ of injunction be granted by this Court directed to the respective plaintiffs and counter-defendants, individually and jointly, perpetually enjoining and restraining them, their officers, agents and employees, from directly or indirectly infringing said Letters Patent #3,524,965;
- (c) That the respective plaintiffs and counter-defendants, individually and jointly, be decreed to account to the defendants for all the gains, profit, or advantage realized by each
 of them from their infringement and unlawful use and practice of
 the invention patented in and by said letters patent, and in addition to the said gains, profit and advantage to be accounted for,
 that the damages sustained by the defendants as a result of said
 infringement be increased threefold;
- (d) That the plaintiffs and counter-defendants, individually and jointly, be decreed to pay the costs herein, including reasonable attorney's fees; and

(e) That the defendants have such other and further relief as the circumstances of the case may warrant or justify, or as the court may require.

Dated at Bridgeport, Connecticut, this 30th day of October, 1970.

Edward F. Kunin, Attorney for Defendants, Stanley Arron, Max Arron, Anna Arron and Visa-Therm Products, Inc.
285 Golden Hill Street
Bridgeport, Conn. 06604
Telephone 335-7393

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendants' Amended Answer and Counterclaims was mailed this 3rd day of November. 1970, postage prepaid, to Arthur T. Fattibene, Esq., Attorney for the Plaintiffs and Counter-defendants, directed to his address of 2480 Post Road, Fairfield, Connecticut.

Edward F. Kunin Attorney for Defandants 285 Golden Hill Street Bridgeport, Conn. 06604

UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

TIMELY PRODUCTS CORPORATION AND RAPHAEL J. COSTANZO

Plaintiffs

VS.

STANLEY ARRON, ET AL, Defendants

Civil Action #11864

STANLEY ARRON,

Counter-plaintiff

VS.

..........

TIMELY PRODUCTS CORPORATION, BENJAMIN M. HINES, and LOIS D. HINES.

Counter-defendants

REPLY TO DEFENDANTS' SECOND AMENDED ANSWER AND COUNTERCLAIMS

Plaintiffs Timely Products Corporation and Raphael J.

Costanzo reply to Defendants' second amended answer and counterclaims as follows:

REPLY TO DEFENDANTS' FIRST COUNTERCLAIM

1. Plaintiffs admit that the Court has jurisdiction of the Counterclaim for Declaratory Judgment under the Federal Declaratory Judgment Act, and deny that Costanzo Patent Number 3,293,405 is invalid and/or not infringed by Defendants' product and/or unenforceable against the Defendants and those in privity with them as alleged in paragraph 100 of Defendants' second amended answer and counterclaims.

- Plaintiffs deny the allegations of paragraph 101 of
 Defendants' second amended answer and counterclaims.
- 3. Plaintiffs deny the allegations of paragraph 102 of Defandants' second amended answer and counterclaims.
- 4. Plaintiffs deny the allegations of paragraph 103 of Defendants' second amended answer and counterclaims.
- Plaintiffs deny the allegations of paragraph 104 of Defendants' second amended answer and counterclaims.

REPLY TO DEFENDANTS' SECOND COUNTERCLAIM

- 6. Plaintiffs deny the allegations of paragraph 105 of Defendants' second amended answer and counterclaim, and leave Defendants to their proofs.
- 7. Plaintiffs deny that Defendant, Stanley Arron and Plaintiff, Raphael J. Costanzo sometime on and after November 5, 1963 were jointly associated with a corporation owned by them, known as Stanzo Electronics Industries, Inc. Plaintiff Raphael J. Costanzo and Defendant Stanley Arron were both officers and directors of Stanzo Electronic Industries, Inc., which corporation was organized to market a Boat Stove invented by Plaintiff Costanzo.
- 8. Plaintiffs deny the allegations of paragraph 107 of Defendants' second amended answer and counterclaim.
- Plaintiffs deny the allegations of paragraph 108 of Defendants' second amended answer and counterclaim.
- 10. Plaintiffs deny the allegations of paragraph 109 of Defendants' second amended answer and counterclaim.
- 11. Plaintiffs deny the allegations of paragraph 110 of Defendants' second amended answer and counterclaim.

- 12. Plaintiffs deny the allegations of paragraph 111 of Defendants' second amended answer and counterclaim.
- 13. Plaintiffs deny the allegations of paragraph 112 of Defindants' second amended answer and counterclaim.
- 14. Plaintiffs deny the allegations of paragraph 113 of Defendants' second amended answer and counterclaim.

AFFIRMATIVE DEFENSES TO SECOND COUNTERCLAIM

- 15. Any letters by or in the beaut of the Plaintings, to which reference is made in paragraph III of Defendants' second amended answer and counterclaims, were written in support of Lepishmate good faith business interest of the Plaintiffs advising the recipients of said letters of the Issuance of the patent in suit to the Plaintiff Raphael J. Costanzo, and inquiring as to weather orbot the recipients of said letters desired a license under said patent in suit.
- 16. The letter referred to in paragraph 112 of Defendents' enswer and counterclaim was written pursuant to the U.S. Patent Laws, 35 U.S.C. 271(b).
- 17. The second counterclaim fails to state a claim for which relief may be granted.

first and second WHEREFORE, Plaintiffs pray that the/counterclaims be dismissed, with costs including reasonable attorney's fees, and for such other relief as this Court may deem just and proper.

Plaintiffs Timely Products Corporation and Raphael J.

Costanzo and Counter-defendants Benjamin M. Hines and Lois D.

Hines further reply to Stanley Arron's counterclaim of infringement as follows:

REPLY TO DEFENDANTS' THIRD COUNTERCIAIM

- 18. Plaintiffs and counter-defendants admit that counter-plaintiff Stanley Arron's counterclaim of paragraph 114 of his second amended answer is a counterclaim for patent infringement, but it is denied that said counterclaim is permitted under Rule 13 of the Rules of Civil Procedure.
- 19. Plaintiffs and counter-defendants agree with the allegations of paragraph 115 of Defendants second amended answer.
- 20. Plaintiffs and counter-defendants deny the U.S. Letters patent 3,392,264 was duly and legally issued to Defendant S. Arron and further that they have insufficient knowledge as to the ownership of said U.S. Letters patent 3,392,264 and leave S. Arron to his proofs with respect to the allegations of paragraph 116.
- 21. Plaintiffs and counter-defendants have insufficient knowledge to either admit or deny allegations of paragraph 117 and leave Defendant S. Arron to his proofs with respect thereto.
- 22. Plaintiffs and counter-defendants deny the allegations of paragraph 118 of Defendants' second amended answer.
- 23. Plaintiffs and counter-defendants deny the allegations of paragraph 119 of Defendants' second amended answer.
- 24. Plaintiffs and counter-defendants have insufficient knowledge with respect to the allegation of paragraph 120, and leave the defendants to their proofs.

AFFIRMATIVE DEFENSES TO S. ARRON'S COUNTERCLAIM OF FATENT INFRINGEMENT OF U.S. PATENT 3,392,264

25. The Arron patent 3,392,264 is invalid and void because, contrary to the requirements of 35 U.S.C. 102 and 103, the alleged invention was known and used by Defendant Arron as a result of his association with Plaintiff Raphael Costanzo who had made the invention and disclosed the invention to Defendant S.

Arron prior to the alleged invention claimed in said Arron Patent 3,392,264 as is evidenced inter alia by the U.S. Letters Patent granted to Plaintiff Raphael J. Costanzo \$3,293,405 on December 20, 1966 on an application filed September 13, 1965.

- 26. By reason of the proceedings had in the United States Patent Office on the application which resulted in said Arron patent 3,392,264 and/or by reason of the admissions, representatives and averments therein made by or on behalf of the Defendant Arron, Defendant Arron fraudulently and/or surreptitiously, induced said Patent Office to grant said patent 3,392,264 although Defendant Arron well knew that the invention was previously made by Plaintiff Costanzo.
- 27. The Arron patent is invalid because the alleged invention defined in the claims thereof does not patentably distinguish over the patent in suit granted to Plaintiff Costanzo.
- 28. Said Arron patent was issued by the United States
 Patent Office without due investigation and/or whereby the
 alleged invention was not properly understood, wherefore the
 Commissioner of Patents exceeded his legal authority in granting
 the aforesaid Letters Patent to Arron and said Letters Patent is
 therefore void and of no effect.
- 29. That counter-defendants Benjamin Hines and Lois
 Hines at all times acted within their legal capacities as officers

of Plaintiff Timely Products Corporation with respect to the manufacture and sale of the electrically heated sock construction in suit under a valid license from co-plaintiff Raphael J. Costanzo, and for these reasons they personally cannot be liable for any infringement and/or contributory infringement.

- 30. That Plaintiffs and counter-defendants are not committing any infringement of the patent charged.
- 31. S. Arron is not the inventor of the subject matter disclosed and/or claimed in U. S. Patent 3,392,264.

WHEREFORE, Plaintiffs and counter-defendants Benjamin
Hines and Lois Hines pray that Defendant Arron's counterclaim for
patent infringement be dismissed with cost including reasonable
attorney's fees, treble damages, a judgment of invalidity and noninfringement of said Arron Patent #3,392,264; and such other relief
as the Court may deem just and proper.

REPLY TO DEFENDANTS' FOURTH COUNTERCLAIM

- 32. Plaintiffs and counter-defendants admit that the counter-plaintiff Stanley Arron's counterclaim of paragraph 121 of his second amended answer is a counterclaim for patent infringement, but it is denied that said counterclaim is permitted under Rule 13 of the Federal Rules of Civil Procedure.
- 33. Plaintiffs and counter-defendants, based on their best available information and knowledge, agree with the allegations of paragraph 122 of the Defendants' second amended answer.
- 34. Plaintiffs and counter-defendants deny that U.S. Letters Patent 3,524,965 was duly and legally issued to the Defendant Stanley Arron and further that they have insufficient

knowledge as to the ownership of said U. ; Letters Patent

3,524,965 as alleged in paragraph 123 of Defendants' second amended answer and leave Defendant Stanley Arron to his proofs.

- 35. Plaintiffs and counter-defendants have insufficient knowledge to either admit or deny the allegations of paragraph 124, and accordingly leave the Defendant Stanley Arron to his proofs with respect thereto.
- 36. Plaintiffs and counter-defendants deny the allegation of paragraph 125 of Defendants' second amended answer.
- 37. The plaintiffs and counter-defendants deny the allegations of paragraph 126 of Defendants second amended answer.
- 38. Plaintiffs and counter-defendants have insufficient knowledge with respect to the allegations of paragraph 127 of Defendants' second answer, and therefore leave the Defendant to his proofs.

AFFIRMATIVE DEFENSES TO DEFENDANTS' COUNTERCLAIM OF PATENT INFRINCEMENT OF U.S. PATENT #3,524,965

39. Patent #3,524,965 is invalid and void because contrary to the requirements of 35 U.SC. 102 and 103 the alleged invention was known and used by defendant more than one year prior to filing the application therefor as a result of Defendant Stanley Arron's association with Raphael J. Costanzo. Plaintiff Raphael Costanzo made the invention and disclosed the invention to the Defendant Stanley Arron prior to the filing of the application on which Arron Patent #3,524,965 was granted.

- 40. By reasons of the proceedings had in the United States Patent Office on the application which resulted in said patent \$3,524,965 and/or by reason of the admissions, representations and/or averments made therein by or on behalf of the Defendant Stanley Arron, Defendant Arron fradulently induced said Patent Office to grant said U. S. Letters patent \$3,524,965 although Defendant Arron well known that the invention was previously made by Plaintiff Costanzo.
- 41. That U. 5. Letters Patent #3,524,965 is invalid and void because the alleged invention defined in the claims thereof does not patentably distinguish over the patent in suit granted to Plaintiff Costanzo.
- 42. Said U. S. Letters Patent #3,524,965 was issued by the United States Patent Office without due investigation and/or whereby the alleged invention was not properly understood wherefore the Commissioner of Patents exceeded his legal authority in granting said Letters Patent to Arron, and therefore said Letters Patent is void and of no effect.
- 43. That counter-defendants Benjamin Hines and Lois Hines, at all times, acted within their legal capacities as officers of Plaintiff Timely Products Corporation, with respect to the manufacture and sale of the electrically heated sock construction in suit under a valid license agreement from co-plaintiff Raphael J. Costanzo, and for these reasons they personally can not be liable for the infringement and/or contributory infringement alleged by Defendants.

- 44. That Plaintiffs and counter-defendants are not committing any infringement of Patent #3,524,965.
- 45. Stanley Arron is not the inventor of the subject matter disclosed and/or claimed in U.S. Letters Patent #3,524,965.
- 46. That Shelton Hosiery Company used the subject matter of the invention allegedly covered by Defendant's patent #3,524,965 in accordance with Plaintiff Costanzo's construction more than one year prior to the filing or Defendant's, Stanley Arron, application on which said Patent #3,524,965 was granted.
- 47. That the structure made by Shelton Hosiery Company in recordance with Plaintiff Costanzo's disclosure to it was more known to Defendant Stanley Arron more than one year prior to Arron's filling of the application on which Fatent #3,524,965 issued.
- 48. That the pretended invention, or improvements described and/or claimed in patent #3,524,965, does not amount to a patentable invention within the meaning of the U.S. Patent Laws, but that on the contrary, in view of what was known in the art to which said patent #3,524,965 relates, at the time of said pretended invention, that the invention described and claimed in said patent 3,524,965 was either known or obvious to one skilled in the art to which the patent relates.
- 49. That every material or substantial part of the invention disclosed or claimed for which infringement is claimed was invented by others prior to the alleged invention thereof by Defendant S. Arron, and was described and disclosed in various publications.

- 50. That both defendant's patents in suit are invalid because, for the purpose of deceiving the public, the descriptions and specification, affidavits filed in the Patent Office during the prosecution thereof and statements and representations made in support thereof were made to cover less than the whole truth relevant to the inventions claimed in said patents.
- 51. That the invention allegedly disclosed in U. S. Patent #3,524,965 is substantially identical with the invention disclosed and/or claimed in Defendant's prior patent #3,392,264.
- 52. That Defendant S. Arron had offered for sale the pretended invention disclosed and/or claimed in said Defendant's patent #3,524,965 more than one year prior to the filing of the application thereon.

WHEREFORE, Plaintiff and counter-defendants Benjamin
Hines and Lois Hines pray that Defendant Arron's counterclaim for
infringement of Patent #3,524,965 be dismissed with cost including
reasonable attorney's fees, treble damages, a judgement of invalidity and/or non-infringement, and such other relief as the Court
may deem just and proper.

COUNTER-DEFENDANTS' COUNTERCIAIM AND PLAINTIFFS' COUNTER-COUNTERCIAIM WITH RESPECT TO DEFENDANT'S U.S. PATENTS

By way of counter-defendants' counterleaim and Plaintiffs' counter-counterclaim it is averred:

53. This cause of action arises under the Patent Laws of the United States, Time 35, and seeks a declaratory judgement of non-infringement, invalidity, and non-enforcement of U. S. Letters Patent #3,392,264 and U. 7. Letters Patent #3,524,965

under the Federal Declaratory Judgment Act; U. S. Code, Title 28, Sections 2201 and 2202.

- 54. Plaintiffs Timely Products Corporation is a duly organized corporation, organized under the Laws of Connecticut and maintaining a principle place of business in Fairfield, Connecticut, and Raphael J. Costanzo is a citizen and resident of the State of Connecticut residing at 119 Park Street in Bridgeport, Connecticut.
- 55. Counter-defendants Benjamin Hines and Lois Hines are citizens of the State of Connecticut and they both reside in Fairfield, Connecticut.
- 56. Defendant Stanley Arron is a citizen of Connecticut and he resides in Bridgeport, Connecticut.
- 57. S. Arron's U. S. Letters patents #3,392,264 and #3,524,965 are invalid and not infringed for the reasons set forth in paragraphs 25 to 31 and paragraphs 39 to 52 herein.

WHEREFORE Plaintiffs and counter-defendants pray for a judgment of

- (a) Dismissal of Defendant S. Arron's counterclaims for patent infringement of patent numbers #3,392,264 and #3,524,965,
- (b) A declaration of invalidity and non-infringement of U. S. Letters Patent 3,392,264 and U. S. Letters Patent \$,524,965, and unenforceability of said patents.
 - (c) Cost and reasonable attorney's fees.

(d) And for such other relief as the Court may deem just and proper.

Arthur T. Fattibene Attorney for Plaintiffs 2480 Post Road Fairfield, Connecticut Tel.: 255-4400

To: Edward F. Kunin, Esq. 285 Golden Hill Street Bridgeport, Connecticut

> Ernest Junkins, Esq. 945 Main Street Bridgeport, Connecticut

UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

TIMELY PRODUCTS CORPORATION and RAPHAEL J. COSTANZO,

Plaintiffs

VS.

STANLEY ARRON, ET AL,

Defendants

_____ Civil Action #11 64

STANLEY ARRON,

Counter-plaintiff

vs.

TIMELY PRODUCTS CORPORATION, BEN-JAMIN M. HINES and LOIS D. HINES,

Counter-defendants

DEFENDANTS' REPLY TO AFFIRMATIVE
DEFENSES AND TO COUNTER-DEFENDANTS'
COUNTERCLAIM AND PLAINTIFFS' COUNTER-COUNTERCLAIM WITH RESPECT TO DEFENDANTS'
UNITED STATES PATENTS

- Defendants and Counter-plaintiffs deny each and every allegation contained in Paragraphs 15, 16 and 17 of plaintiffs' and Counter-defendants' Affirmative Defenses to Second Counterclaim.
- Defendants and Counter-plaintiffs deny each and every allegation contained in Paragraphs 25, 26, 27, 23, 29, 30
 and 31 of plaintiffs and counter-defendants Affirmative Defenses

to Stanley Arron's Counterclaim of Patent Infringement of U. S. Patent 3,392,264.

- 3. Defendants and Counter-plaintiffs deny each and every allegation contained in Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 40, 49, 50, 51 and 52 of Plaintiffs' and Counter-defendants' Affirmative Defenses to Defendants' Counterclaim of Patent Infringement of U. S. Patent 3,524,965.
- 4. Defendants and Counter-plaintiffs deny the allegations of Paragraphs 53 and 57 of Counter-defendants Counterclaim and Plaintiffs' Counter-Counterclaim.
- as to the allegations contained in Paragraphs 54 and 55 of Counter defendants' Counterclaim and Plaintiffs' Counter-Counterclaim.
- 6. Defendants and Counter-plaintiffs admit the allegations of Paragraph 56 of Counter-defendants Counterclaim and Plaintiffs' Counter-Counterclaim.

Edward F. Kunin Attorney for Defendants 2 5 Golden Hill Street Bridgeport, Conn. 06604 Telephone: 335-7393

TO: Arthur T. Fattibene, Esq. 24'0 Post Road Fairfield, Connecticut

Ernest Junkins, Esq. 655 Main Street Bridgeport, Connecticut

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CROFILM	(79)
	DISTRICT COURT
VEW HAVEN	T OF CONNECTICUT
TIMELY PRODUCTS CORPORATION and RAPHAEL J. COSTANZO,	: ८९ ८ ७० हो भूष
Plaintiffs,	# U. S. I IN I. IOT COURT HEARING CONN.
vs.	:
STANLEY ARRON, MAX ARRON, ANNA ARRON and VISA-THERM PRODUCTS, INC.,	: CIV. No. 11,864
Defendants.	: -x
STANLEY ARRON and VISA-THERM PRODUCTS, INC.,	;
Counter-Plaintiffs (Counter-Defendants),	•
vs.	: MEMORANDUM
TIMELY PRODUCTS CORPORATION, RAPHAEL J. COSTANZO, BENJAMIN M. HINES and LOIS D. HINES,	:
Counter-Defendants (Counter-Plaintiffs).	: -x

MURPHY, D.J.

This is a patent case, but not the common garden variety kind. Here, three United States patents are in issue. Aside from the usual issues of validity and infringement, claims under pendent jurisdiction of misappropriation, unfair competition and price discrimination are alleged, together with charges of fraud against defendant Stanley Arron in securing one of his patents and countercharges by Arron of malicious interference with his contrargal rights.

We will assume, for the present, that the action is between two alleged inventors, plaintiff Raphael J. Costanzo and defendant Stanley Arron, each claiming infringement of

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the other's patent, Costanzo Patent numbered 3,293,405 and Arron Patent numbered 3,392,264, each relating to "Electrically Heated Footwear." Arron claims that Costanzo also infringed his other patent, numbered 3,524,965, relating to "Electric Heating Elements For apparel."

The Costanzo Patent

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Costanzo filed his application in the U.S.Patent Office on September 13, 1965. The patent was issued on December 20, 1966.

Although 35 U.S.C. § 282 provides that a patent shall be presumed valid, we are nevertheless required to examine its validity. Reckendorfer v. Faber, 92 U.S. 347, 355 (1875). Thus, the question of patent validity is a question of law. Graham v. John Deere Co., 383 U.S. 1, 17 (1966); A&P Tea Co. v. Supermarket Corp., 340 U.S. 147, 155 (1950) (concurring opinion); Lemelson v. Topper Corp., 450 F.2d 845, 848 (2d Cir. 1971), cert. denied, 405 U.S. 989 (1972); Shaw v. E.B. & A.C. Whiting Co., 417 F.2d 1097 (2d Cir. 1969), cert. denied, 397 U.S. 1076 (1970). addition, there is an important public interest in patent validity. Anderson's-Black Rock v. Pavement Salvage Co., 396 U.S. 57, 61 (1969). The reason is obvious. "A patent confers a monopoly on its holder, and the law does not allow the granting of these available franchises to private individuals, with consequent public detriment, unless there is a concomitant public benefit." Beckman Instruments, Inc. v. Chemtronics, Inc., 439 F.2d 1369, 1371 (5th Cir.), cert. denied, 400 U.S. 956 (1970). Public benefit is a constitutional requirement. The Supreme Court, in Graham

v. John Deere Co., supra, at 6, said that under the Constitution (Art. I, \$8), Congress may not "enlarge the patent monopoly without regard to the innovation, advancement, or social benefit gained thereby. Moreover, Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available.

Innovation, advancement, and things which add to the sum of useful knowledge are inherent requisites in a patent system which by constitutional command must 'promote the Progress of * * * useful Arts.' This is the standard expressed in the Constitution and it may not be ignored. And it is in this light that patent validity 'requires reference to a standard written into the Constitution.'"

Costanzo and Arron hold similar patents. Neither party vigorously challenged the validity of the other's patent(s) on the ground of obviousness, probably for fear that such a challenge would raise serious questions as to the validity of his own patent. The interest of the public has not been represented. It seems particularly appropriate in such a case that this Court closely scrutinize the validity of the patents despite the statutory presumption.

The Costanzo patent discloses a self-contained battery heated sock in which a low voltage flashlight-type battery is carried in a pouch adjacent to the top of the sock, in which the flexible heater assembly includes a narrow flat strip of resistance ribbon sandwiched between a covering material adhesively secured in a heat conducting relationship with the resistor strip, and in which the heater assembly is located in the toe part of the sock.

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Only Claim 2 is in issue. It reads: 2 "2. In combination 3 (a) a woven sock having a toe portion, a heel portion and a connective leg portion, (b) means defining a pocket adjacent [to] the upper end of said leg portion adapted to receive a low voltage battery of less than 6 volts, 8 (c) electrical non-conductive means defining a pocket in the toe portion of said sock, 8 (d) a heater disposed in said toe pocket, 9 (e) said heater including a flat resistor strip 10 of electrical resistance material, 11 (f) radiation means connected in heat transfer relationship to said flat resistor strip for 12 defining an expanded radiation surface for said heater, 13 (g) said radiation means including a pair of heat conducting sheets of material for sand-14 wiching said resistor strip in heat transfer 15 relationship therebetween, 16 (h) means joining said heat conducting strips together and electrically insulating said strips from said resistor strip, 17 18 (i) electrical conductors connecting said resistor strip in circuit to said battery, and 19 20 (j) means maintaining said conductors against the leg portion of said sock." 35 U.S.C. § 103, * which codified the judicial precedents embracing the principle announced in Hotchkiss v. 23 25 Conditions for patentability; "§ 103. non-obvious subject matter. 26

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made."

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Greenwood, 52 U.S. 248 (1850), requires as one of the conditions for patentability that differences between the matter sought to be patented and the prior art must not have been obvious to a person of ordinary skill in the art. The Supreme Court in Graham v. John Deere Co., supra, at 17, definitively construed § 103 and established this test for obviousness:

"Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined." Id. at 18.

The Supreme Court in Graham admonished that the requirements of § 103 be honored with "strict observance."

Id. at 18. This admonition was reiterated in Anderson'sBlack Rock v. Pavement Co., supra, at 62.

We are conscious of the danger of hindsight in examining a patent for obviousness. Triax Co. v. Hartman

Metal Fabricators, Inc., 479 F.2d 951 (2d Cir.), cert. denied,

414 U.S. 1113 (1973). However, the Costanzo patent is a combination patent and these patents must be closely scrutinized for obviousness. A&P Tea Co. v. Supermarket

Corp., supra; Supreme Equipment & Systems Corp. v. Lear

Siegler, Inc., 495 F.2d 860 (2d Cir. 1974); General Radio Co. v. Kepco, Inc., 435 F.2d 135, 137 (2d Cir. 1970), cert.

denied, 402 U.S. 1008 (1971).

The relevant prior art is in part described by Costanzo in his specification as follows:

"Heretofore all the known efforts to electrically heat such a sock required a source of electrical power which was extraneous or remotely disposed from the sock itself, e.g., a fixed source, such as household or vehicle

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power, or a portable power pack carried on the person's body. When the line current from a fixed source of electrical power was utilized, e.g., in a home or vehicle, the mobility of the person wearing such heated sock or footwear was necessarily limited to the length of cord or wire required for conducting the current from the fixed power source to the sock. Consequently, such socks had only limited application, as for example when sleeping, resting or when flying an airplane or operating some other vehicle wherein movement of the wearer was necessarily confined and where sufficient power was available to energize the heater of such socks.

"To obviate the mobility handicap of such electrically heated footwear socks, efforts have been made to provide a portable power pack by which the heater of such socks or footwear may be energized. Because of the energy heretofore required to energize the heater used in such socks, such efforts resulted in utilizing a relatively large size battery or power pack which had to be worn by the wearer about his waist. For this reason long conductors or wires were required to extend along the body of the wearer to connect the power pack to the heating means disposed within the sock or footwear. Such power packs, however, due to the size requirements of the battery necessary to energize such heaters, were relatively bulky, heavy and cumbersome to wear. Also, the wires required to extend from the power pack to the sock greatly interfered with the mobility of the person wearing such sock and associated power pack unit." Column 1, lines 15 through 47, Costanzo Patent No. 3,293,405.

Costanzo's witness, Murphy, explained in greater detail his experience and knowledge of the prior art. He testified that Northern Electric Company first produced a battery heated sock in 1953 and continued to produce this until 1972. Murphy was employed by that company as an electrical engineer from 1957 to 1961. The sock as first produced in 1953 was energized by a large battery suspended from the waist with wires running down to the sock which heated the sole portion of the sock. Subsequently, in the '50s and '60s, other companies produced the same type of sock, that is, the 6 volt lantern-type battery socks. He

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identified these companies as Kimco and Burnham, and later a Japanese firm, Hunter, imported such socks into the United States. None were patented. In addition to Murphy's testimony relating to the prior art, the patent examiner cited nine U.S. patents and two foreign patents. Not cited or referred to in the testimony of any witness is an article, "Cordless Battery Power," by Robert J. McCarthy, Assistant Products Manager of the Battery Division, Sonotone Corp.*

This article appeared in the June or July 1963 issue of Appliance Manufacturer magazine, and approximately 45,000 to 50,000 copies of the article were reprinted and distributed by Sonotone. This article discusses the development of miniature rechargeable nickel-cadmium batteries and teaches the use of low voltage in cordless items.

Not surprisingly, there was very little crossexamination of any witness concerning the prior art and what there was was less than vigorous.

In addition, however, the Winchell patent, numbered 3,079,486 (1963), and the Williams patent, numbered 1,702,583 (1929), both referred to by the examiner, teach the unitization of the battery and the sock. Winchell also teaches the use of a low voltage flashlight-type battery secured in a pocket at the top of the sock. The Theodore patent, numbered 3,010,007 (1961), discloses a flexible radiant heating means. The Carrona patent, numbered 3,084,241 (1963), teaches a ribbon-type heating means. The Jacobsen patent, numbered 2,329,766 (1943), the Marick patent, numbered 2,277,772 (1942)

^{*} This article is referred to in McCarthy's deposition, but that part was not read into evidence by either party.

and a British patent, U.S.Rubber No. 546,812 (1942), teach the use of heating sheets.

Admittedly there are differences between the prior art and the Costanzo patent. The construction of the heating means claimed by Costanzo is not specifically indicated by the prior art. Also, the exact location of the heating element in the Costanzo sock is not shown by the prior art.

The evidence of the level of ordinary skill in the electrically heated sock art in 1965 indicates that the level was of people with electrical engineering degrees and/or an extensive practical knowledge of electricity and the use of batteries, combined with experience in the electrically heated clothing and sock field.

Although there are some differences between the prior art and the Costanzo patent, the differences are insubstantial. The conclusion that the Costanzo patent was obvious to anyone with ordinary skill in the art is clear from a consideration of the relevant patents, the McCarthy article, and the commercial nonpatented socks. See, Triax Co. v. Nartman Metal Fabricators, Inc., supra.

Plaintiff's expert, Murphy, testified that the difference between the six volt sock and the Costanzo smaller voltage battery sock was not obvious because from his experience people skilled in the art never did discover it. Murphy explained this by saying that he and the engineers who worked for him would have recognized the Costanzo concept had it been obvious because they were familiar with the patents cited by the examiner, since they were involved with the development of electric socks. Upon being questioned by the Court, he said that the fact that people skilled in the art didn't see the potential of plaintiff's concept was in

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fact the basis for his opinion. If this logic was sound, any new concept would always be patentable on the theory that it was nonobvious since no one did it before. However, this is not the test. Carter-Wallace, Inc. v. Otte, 474 F.2d 529 (2d Cir. 1972), cert. denied, 412 U.S. 929 (1973).

The present case is similar to <u>Burgess Cellulose</u>

Co. v. <u>Wood Flong Corp.</u>, 431 F.2d 505, 508 (2d Cir. 1970),
in which "[t]he prior art revealed several propositions
which, in combination even though not individually, would
lead the person having ordinary skill in the art to the use
of synthetic silicates in stereotype mats." In <u>Formal</u>

Fashions, Inc. v. <u>Braiman Bows</u>, Inc., 369 F.2d 536 (2d Cir.
1966), like the present case there were differences between
the prior art and the patent in question. Nonetheless the
court found the patent to be fully anticipated by the prior
art and therefore, invalid as obvious because the differences were not substantial. <u>Accord</u>, <u>Lemelson</u> v. <u>Topper</u>
Corp., supra.

Plaintiff Costanzo argues that a finding of nonobviousness is mandated by secondary considerations, such as commercial success, long felt need, and the failure of others who were aware of the prior art to take the same steps as did Costanzo.

The Supreme Court, in Graham v. John Deere Co.,

supra, at 17-18, said that secondary considerations "might

be utilized" and "may have relevancy" (emphasis supplied).

In the companion case to Graham, Calmar, Inc. v. Cook Chemical

Co., decided sub. nom. Graham v. John Deere Co., supra, the

court rejected the secondary considerations because the

patent was "clearly evident from the prior art." It said:

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Cook Chemical insists, however, that the development of a workable shipper-sprayer eluded Calmar, who had long and unsuccessfully sought to solve the problem. And, further, that the long felt need in the industry for a device such as Scoggin's together with its wide commercial success supports its patentability.

"However, these factors do not, in the circumstances of this case, tip the scales of patentability." 383 U.S. at 35-36.

Similarly, the Second Circuit has held that once it has been established that the differences between the prior art and the patent in question are insubstantial, "such secondary evidence cannot be held to demonstrate lack of obviousness." Formal Fashions, Inc. v. Braiman Bows, Inc., supra, at 539; Julie Research Laboratories, Inc. v. Guildline Instruments, Inc., No. 73-2116 (2d Cir., July 22, Accord, Dempster Brothers, Inc. v. Buffalo Metal Container Corp., 352 F.2d 420 (2d Cir. 1965), cert. denied, 384 U.S. 940 (1966), and Lorenz v. F.W.Woolworth Co., 305 F.2d 102 (2d Cir. 1962) (commercial success by itself does not establish the validity of a patent); Carter-Wallace, Inc. v. Otte, supra (failure of others to take an obvious step does not prevent a finding of invalidity); Continental Can Co. v. Old Dominion Box Co., 393 F.2d 321 (2d Cir. 1968) (commercial success and the solution of a long standing need cannot breathe life into a patent otherwise invalid for obviousness).

> Evidence of foreign patents as a secondary consideration.

Costanzo offered in evidence patents for his electrically heated sock which he averred were granted to him by Canada, Great Britain, Japan, Switzerland, France, Belgium, Norway and Russia. These patents were marked as exhibits

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for identification pending a determination of their relevancy.

Plaintiff contends that the granting of the corresponding foreign patents is the type of secondary consideration referred to by the Supreme Court in Graham v. John Deere Co., supra, as relevant in determining the issue of nonobviousness. Plaintiff also argues that the foreign patents are evidence of the invention's "universal patentability." The relevance of the invention's "universal patentability" is questionable, since the patent must stand or fall on whether or no it meets the standards of the United States patent laws.

The Court of Customs and Patent Appeals has repeatedly held that corresponding foreign patents are of no relevance to the question of the granting of a United States patent. In a case similar to the present case the court affirmed the rejection of a claim for a retractable lipstick holder, and said:

"We need not even consider the actions taken in foreign countries with regard to the patentability of this application under our law. The granting of a patent on an 'invention' in a foreign country has no relevance to the determination of whether the same 'invention' would be obvious within the ambit of § 103, since it is notoriously well known that the standards of patentability vary from country to country." Application of Dulberg, 472 F.2d 1398 (C.C.P.A. 1973).

Likewise, in Application of Goodman, 476 F.2d 1365, 1369 (C.C.P.A. 1973), the court rejected the argument that the issuance of a foreign patent on the same subject matter is evidence of patentability: "It has long been established that the argument has no pertinence to the determination of obviousness." Accord, Application of Larsen, 292 F.2d 531, 533 (C.C.P.A. 1961), cert. denied, 370 U.S. 936 (1962)

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("in view of the differences between foreign patent laws and those of the United States, the allowance of patent claims in foreign countries is not pertinent to the question of whether similar claims should be allowed here."); In re Kluter, 92 F.2d 906, 908 (C.C.P.A. 1937) (a Canadian patent "would be wholly immaterial in considering the issue here presented"); In re Guinot, 76 F.2d 134, 135 (C.C.P.A. 1935) ("in view of the fact that the German patent system may be quite different in its legal aspects from that of the United States, we feel that it should not affect our conclusion here.").

Application of Busch, 251 F.2d 617 (C.C.P.A. 1958), suggests that evidence of corresponding foreign patents may be similar to evidence of commercial success, but holds that such evidence is not controlling where (as in the present case) there is a clear lack of patentable invention. See, In re Kleine, 83 F.2d 928 (C.C.P.A. 1936).

Plaintiff relies on American Infra-Red Radiant Co.,
Inc. v. Lambert Industries, Inc., 360 F.2d 977, 987 (8th Cir.),
cert. denied, 385 U.S. 920 (1966), for the proposition that
decisions of foreign patent offices are admissible evidence
on the factual issue of invention. The 8th Circuit did
find that such decisions, "while certainly not controlling,
are evidence on the factual issue of 'invention.'" However, the court seemed to accept the foreign patent decisions
because they were reported in "lucid opinions following
adversary-type proceedings." There is no evidence in the
present case of any decisions or of the type of proceedings
in the foreign patent offices. It could well be that, as
a matter of form, some or all of the corresponding foreign
patents were granted because of the issuance of the Costanzo

patent by the United States Patent Office.

The corresponding foreign patents, marked for identification, will therefore not be admitted in evidence because they are irrelevant to the obviousness or non-obviousness of the Costanzo United States patent. For the reasons stated, the Clerk is directed to enter judgment for the defendants on plaintiff's first claim based upon Costanzo Patent No. 3,293,405 on the ground that Claim 2 is invalid for obviousness. We do not reach the question of infringement.

The validity of Arron's sock patent.

Defendant, Stanley Arron, was granted on July 9, 1968, Patent No. 3,392,264 entitled "Electrically Heated Footwear."

The subject matter of the Arron sock patent is a self-contained electrically heated sock energized by a low voltage battery, having a flexible electrical resistance ribbon adhesively sandwiched between nonmetallic covering material of low heat conductivity and secured to the sole of the sock in the area at the base of the wearer's toes and having conducting wires connecting the resistance ribbon to the battery, which is carried in a pouch attached to the top of the sock.

All four claims of the Arron sock patent are in issue. The claims read as follows:

"1. A stocking adapted to supply heat to the foot of a wearer comprising a foot covering portion and a contiguous leg covering portion, said foot covering portion including a sole having a part adapted to underlie the base of the wearer's toes, a heating element secured on the sole part and including an essentially straight length of electrical resistance ribbon having a size to be sufficiently thin to be

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flexible, a covering of flexible, non-metallic material on said ribbon, said heating element extending only on the part that is adapted to underlie the base of the wearer's toes, said covering material having low heat conductivity to decrease spreading heat from the ribbon to localize the heat at the base of the wearer's toes, a pair of conducting wires secured to the ends of the ribbon and means for connecting the wires to a low voltage source of electrical energy.

- "2. The invention as defined in claim 1 in which the covering is of textile, fibrous material.
- "3. The invention as defined in claim 1 in which the source of electrical energy is a low voltage battery, there is provided a pouch for containing the battery and securing means for securing the pouch to the stocking.
- "4. The invention as defined in claim 1 in which adhesive means secures the covering material on said heating element and in which the said covering material is made of textile fibres."

The Arron and Costanzo sock patents, although not identical, are essentially the same. Both patents disclose a self-contained battery heated sock with the heating element comprised of a flat resistance ribbon adhesively secured between two heat conducting sheets located in the toe area of the sock and connected in circuit to a low voltage battery of less than 6 volts carried in a pouch secured to the top of the sock. The Arron patent differs from the Costanzo patent in two respects: (a) the precise location of the heating element and (b) the amount of heat conductivity of the material covering the heating element.

The Costanzo patent application was filed on September 13, 1965. The Arron patent application was filed on October 23, 1965. Unless Arron established that his date of invention was prior to the Costanzo filing date, the Costanzo patent constitutes prior art. The Arron patent

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is obvious in light of the teachings of Costanzo.* Arron attempted to "swear back" of the Costanzo reference by means of a Patent Office Rule 131 affidavit.**

Under Rule 131 an applicant can "swear back" of a reference by showing a "completion" of the invention prior to the effective date of the reference. The term "completion" is defined by the requirements of subsection (d) of Rule 131, viz., that the facts must be established by reduction to practice or conception of the invention commodule diligence until a subsequent reduction to prathe filing of the application. Application of Clarke, F.2d 987 (C.C.P.A. 1966). In his Rule 131 affidavit, Arron attempted to show a conception of the invention and

^{*} In fact, before Arron filed his Rule 131 affidavit, the patent examiner rejected the Arron application in light of the Costanzo application.

^{**} Rule 131 reads in pertinent part:

[&]quot;131. Affidavit of prior invention to overcome cited patent or publication. (a) When any claim on an application is rejected on reference to a domestic patent which substantially shows or describes but does not claim the rejected invention, * * * and the applicant shall make oath as to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued * * * then the patent * * cited shall not bar the grant of a patent to the applicant * * *.

[&]quot;(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or their absence satisfactorily explained." (Rules of Practice in the United States Patent Office in effect at the time in question.)

due diligence in reducing the conception to practice. Arron does not claim a reduction to practice prior to September 13, 1965, the effective date of the Costanzo reference.

It is of no significance that the Costanzo patent was not issued until after Arron filed his application. The Costanzo application itself is the equivalent of a printed publication and is sufficient to anticipate Arron's application and patent. Van der Horst Corp. v. Chromium Corp., 197 F.2d 791 (2d Cir. 1952); cf., In re Walker, 99 F.2d 976 (C.C.P.A. 1938). However, it is fundamental that the reference is valid only for what it discloses and that if Arron can establish priority, the reference is of no effect. Application of Stempel, 241 F.2d 755 (C.C.P.A. 1957).

The Second Circuit requires that a heavy burden of proof be satisfied to establish a pre-filing date of invention. In <u>United Shoe Machinery Corp.</u> v. <u>Brooklyn Wood Heel Corp.</u>, 77 F.2d 263, 264 (2d Cir. 1935), Judge Learned Hand said that:

"When an inventor's date is to be carried back beyond the date of his application, courts regard the effort with great jealousy, and must be persuaded with a certainty which is seldom demanded elsewhere; quite as absolute as in a criminal case, in practice perhaps even more so."

See also, Rooted Hair, Inc. v. Ideal Toy Corp., 329 F.2d 761 (2d Cir.), cert. denied, 379 U.S. 831 (1964); Thomson Industries, Inc. v. Nippon Thompson Co., 298 F.Supp. 466 (E.D.N.Y. 1968); Ritter v. Rohm & Haas Co., 271 F.Supp. 313 (S.D.N.Y. 1967). The earlier date must be established "by evidence so cogent as to leave no reasonable doubt in the mind of the court, that the transaction occurred substantially as stated." Deering v. Winona Harvester Works, 155 U.S. 286, 301 (1894).

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Arron fails to meet this heavy burden because the evidence does not show that his invention was conceived prior to the filing date of Costanzo's patent.

A leading case defining conception of invention is Townsend v. Smith, 36 F.2d 292, 295 (C.C.P.A. 1929):

"The conception of the invention consists in the complete performance of the mental part of the inventive act. All that remains to be accomplished in order to perfect the act or instrument belongs to the department of construction, not invention. It is therefore the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice that constitutes an available conception within the meaning of the patent."

The mental act required for the conception is a realization by the inventor of the complete and operative means to produce a result. Boyce v. Anderson, 451 F.2d 818 (9th Cir. 1971). When an alleged inventor has only an idea or appreciation of what he wants to accomplish and not a conception of the means to be used in accomplishing the performance, particularly when the means constitute an essential part of the invention, the idea cannot stand as a complete conception of the invention within the meaning of the law.

Rex Chainbelt, Inc. v. Borg-Warner Corp., 477 F.2d 481 (7th Cir. 1973).

Conception is established when the invention is made sufficiently plain to enable a person with ordinary skill in the art to understand and to reduce the invention to practice. Kardulas v. Florida Machine Products Co., 438 F.2d 1118 (5th Cir. 1971); Summers v. Vogel, 332 F.2d 810 (C.C.P.A. 1964); Application of Tansel, 253 F.2d 241 (C.C.P.A. 1958). The conception must be of the invention defined in the claims of the application. Boyce v. Anderson,

supra; Application of Whittle, 454 F.2d 1193 (C.C.P.A. 1972).

In Helene Curtis Industries, Inc. v. Sales Affiliates,
233 F.2d 148 (2d Cir.), cert. denied, 352 U.S. 879 (1956),
the court suggests that a comparison of the language of the
conception document and the language of the application
may indicate that the invention was still in the process of
change and therefore that the pre-filing date was not proved.

A final fundamental principle in this area is that a pre-filing date of invention may not be established solely by the inventor's uncorroborated testimony. Monaplastics, Inc. v. Caldor, Inc., 378 F.2d 20 (2d Cir. 1967); Rooted Hair, Inc. v. Ideal Toy Co., supra; Thompson v. American Tobacco Co., 174 F.2d 773 (4th Cir. 1949).

As proof of conception Arron relies upon his
Rule 131 affidavit and an exhibit attached to that affidavit,
a letter dated August 23, 1965 written and mailed by certified mail to himself describing his its for low veltage
electric and battery operated clothing, there is an interping bags. The letter emphasizes socks are cloved. The
question here is not the corroboration of Arron's testimony
but rather the sufficiency of the letter of August 23, 1965
as recording a conception of the invention claimed in
Arron's patent.

A comparison of the conception document and the application and amendments reveals that the conception letter does not disclose: (1) the sandwiching of the heating element between two sheets of material; (2) any location for the heating element much (can the specific focation only under the base of the toes; (1) a concern; Enterial of low heat conductivity to decrease the stream of the heat; and (4) a self-contained sock. The relief its vete in enableial

part of the Arron patent.

It would not be possible for a person of ordinary skill in the art to construct the sock claimed in the Arron patent by reference to the conception letter. The conception letter failed to reveal the means and the essential idea claimed in the Arron patent. Clearly Arron has failed to establish conception of invention prior to September 13, 1965

The significance of this failure to establish a conception date prior to the effective date of the Costanzo patent is that the Costanzo patent is available as a prior art reference in determining the obviousness or nonobviousness of the Arron sock patent under 35 U.S.C. § 103. It is more than likely that the Arron sock patent is obvious in light of the prior art even without the Costanzo reference. However, a consideration of the Costanzo patent as prior art strengthens the conclusion that the Arron sock patent is availed for obviousness.

test set forth in Granes v. John Deere Co., supra:

(1) determination of the scope and content of the prior art;

(2) ascertainment of the differences between the prior art and the claims at issue; and (3) resolution of the level of ordinary skill in the pertinent art. See the discussion of the general standards of obviousness discussed above (pp. 4-5) in connection with the Costanzo patent.

The relevant prior art -- the commercial nonpatented socks, the article on battery power, and the several patents -- is the same as for the Costanzo patent, with the addition of the Costanzo patent itself.

The heating element in the Arron sock patent is located on the sock "only on the part that is adapted to

PPI-Sandstone 5-3-72-100M-940 underlie the base of the wearer's toes." The heating element is an "essentially straight length of electrical resistance ribbon." The ribbon is covered with "a material having low heat conductivity to decrease the spreading of heat from the ribbon." These features of the Arron patent are not specifically disclosed by the prior art.

The level of ordinary skill in the art in 1965 is the same as for the Costanzo patent, namely, people with electrical engineering degrees and/or an extensive practical knowledge of electricity and the use of batteries, combined with experience in the electrically heated clothing and sock field.

The differences between the Arron sock patent and the prior art are insubstantial. Only the mechanical ability of a person having ordinary skill in the art would be required to make those changes. Julie Research Laboratories, Inc. v. Guildline Instruments, Inc., supra; Supreme Equipment & Systems Corp. v. Lear Siegler, Inc., supra; Burgess Cellulose Co. v. Wood Flong Corp., supra; and Formal Fashions, Inc. v. Braiman Bows, Inc., supra. The location of the heating element is obvious in light of Costanzo and the commercial socks. In light of the teachings of Costanzo, the commercial socks, Theodore, Carrona, Jacobsen, Marick, and the British patent, U.S.Rubber, the construction of the heating element and the low heat conductivity of the covering material claimed in the Arron sock patent are obvious. Other features of Arron's patent, such as the location and use of a low voltage battery and the use of a textile fabric for a covering material are disclosed by the prior art.

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Costanzo contends that the Arron sock patent is invalid under 35 U.S.C. § 102(a) and (f)* because he, and not Arron, invented the electrically heated sock in Arron's patent applicatio. This argument must fail because § 102 prevents "patentability only where the invention was that 'identically disclosed' by the prior art." Ling-Temco-Vought, Inc. v. Kollsman Instrument Corp., 372 F.2d 263 (2d Cir. 1967). Accord, Tate Engineering, Inc. v. United States, 477 F.2d 1336 (Ct.Cl. 1973); Nelson Planning Ltd. v. Tex-O-Graph Corp., 280 F.Supp. 226 (S.D.N.Y. 1968), aff'd. 423 F.2d 36 (2d Cir. 1970). The Arron invention is not identically disclosed by the Costa **p patent.

The Arron sock patent - fraud and "unclean hands."

Costanzo contends that, assuming validity, the

Arron sock patent should not be enforced because the defendant
fraudulently procured the patent by his lack of candor and
good faith during the proceedings before the Patent Office.

Costanzo claims that Arron, in his Rule 131 affidavit,
deliberately attempted to mislead the examiner into believing
that Arron conceived his invention before the effective date

"102. Conditions for patentability; invalidity and loss of right to patent.

"A person shall be entitled to a patent unless

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[&]quot;(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the application for patent, or

[&]quot;(f) he did not himself invent the subject matter sought to be patented."

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of the Costanzo reference. More specifically, Costanzo claims: that the conception document attached to the Rule 131 affidavit was altered by the addition of the phrase "6 [inch] length" in the description of the heating element; that a sales slip for batteries presented as evidence of diligence was also altered by the addition of the words "alkaline cell"; and that Arron failed to indicate that his statement in the second paragraph of the affidavit that he was "associated with another" referred to Costanzo.* Costanzo also claims that Arron's failure to bring the Pupier**and Lillard*** patents to the attention of the examiner, although they were considered relevant in a preliminary search by the defendant, indicates a lack of candor and good faith on Arron's behalf. Although we have held the Arron sock patent invalid, we consider these charges because they go directly to the integrity of the ex parte proceedings in the Patent Office.

It is clear that fraud in the procurement of a patent is a defense to an infringement action, Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965), Carter-Wallace, Inc. v. Riverton

Arron and Costanzo were, for practical purposes, partners. In 1963 they agreed in writing to form a corporation, Stanzo Electronic Industries, Inc. Each were to receive 50% of the stock. The corporation was formed but the stock never issued.

Pupier, No. 2,082,468, is a device which claims to prevent or stop stomach sickness by the means of application of heat to the medulla oblongata.

Lillard, No. 1,918,276, refers to an electrically headed shoe insole.

1 Laboratories, Inc., 433 F.2d 1034 (2d Cir. 1970); and that 2 a District Court has the power to refuse to enforce a patent obtained by fraud. Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944). Proof of fraud requires 5 clear and convincing proof of willfulness and intent. 6 Barr Rubber Products Co. v. Sun Rubber Co., 425 F.2d 1114 7 (2d Cir. 1970); Scott Paper Co. v. Fort Howard Paper Co., 8 432 F.2d 1198 (7th Cir. 1970), cert. denied, 401 U.S. 913 (1971). 9 A party asserting invalidity of a patent on the 10 ground of fraud must prove not only the fraud but also that 11 the fraud was material. Norton v. Curtiss, 433 F.2d 779 12 (C.C.P.A. 1971); Charles Pfizer & Co. v. F.T.C., 401 F.2d 13 574 (6th Cir. 1968), cert. denied, 394 U.S. 920 (1969). 14 The test for materiality of fraud was set forth in Norton, 15 where the court said: 16 "If it can be determined that the claims would 17 18 433 F.2d at 795. 19 Proving materiality without the direct evidence of the 20 examiner is a difficult task. 21

not have been allowed but for the misrepre-sentation, then the facts were material * * *."

SCM Corp. v. Radio Corp. of America, 318 F.Supp. 433, 448 (S.D.N.Y. 1970).

Costanzo concludes that materiality is shown because, relying on the Rule 131 affidavit, the examiner withdrew his rejection of the Arron patent application. This conclusion ignores the "but for" test. It is not likely that the patent examiner's action would have been different had the alterations not been made. In context, the alterations are clearly of minor importance.

The plaintiff's patent expert, Weinstein, was undoubtedly correct when he testified that if Costanzo had been mentioned, the examiner would have considered the merits

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of the affidavit with more scrutiny. However, it would be mere speculation to conclude that <u>but</u> for the failure to reveal the association of Costanzo and Arron, the examiner would have refused to allow Arron to swear back of the Costanzo reference.

The plaintiff admits in his post-trial brief (p. 80) that the withholding of the two patent references does not evidence fraud.

The plaintiff has failed to carry his burden of proving that the alterations and the nondisclosure were material, and accordingly has not proved that Arron procured his sock patent by fraud.

The conduct of defendant Stanley Arron, however, raises the issue of "unclean hands."

A good starting point in a discussion of the "unclean hands" doctrine is <u>Precision Instrument Mfg. Co.</u> v. <u>Automotive Maintenance Machinery Co.</u>, 324 U.S. 806, 815-16 (1945), in which the Supreme Court said:

"The possession and assertion of patent rights are 'issues of great moment to the public. * * * A patent by its very nature is affected with a public interest. As recognized by the Constitution, it is a special privilege designed to serve the public purpose of promoting the 'Progress of Science and useful Arts'. At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market. The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope." (Citations omitted.)

An applicant for a patent owes "the highest Agree of candor and good faith" to the Patent Office. Kingsland v. Dorsey, 338 U.S. 318, 319 (1949). Accord, A.H.Emery Co. v. Marcan

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Products Corp., 389 F.2d 11 (2d Cir.), cert. denied, 393 U.S. 835 (1968); Monsanto Co. v. Rohm & Haas Co., 456 F.2d 592 (3d Cir.), cert. denied, 407 U.S. 934 (1972); Monolith Portland Midwest Co. v. Kaiser Aluminum & Chem Corp., 407 F.2d 288 (9th Cir. 1969).

The Second Circuit has recognized that "the concept of misconduct now goes considerably beyond the classic definition of 'fraud' * * * and includes 'a wide range of "inequitable" conduct found to justify holding a patent unenforceable'". Carter-Wallace, Inc. v. Davis-Edwards

Pharmacal Corp., 443 F.2d 867, 881 (2d Cir. 1971). The court adopted the rationale for this of the Court of Customs and Patent Appeals as set forth in Norton v. Curtiss, supra, at 793-794:

"* * * we do subscribe to the recognition of a relationship of trust between the Patent Office and those wishing to avail themselves of the governmental grants which that agency has been given authority to issue. The ex parte prosecution and examination of a patent application must not be considered as an adversary proceeding and should not be limited to the standards required in inter partes proceedings. With the seemingly ever-increasing number of applications before it, the Patent Office has a tremendous burden. While being a fact-finding as well as an adjudicatory agency, it is necessarily limited in the time permitted to ascertain the facts necessary to adjudge the patentable merits of each application. In addition, it has no testing facilities of its own. Clearly, it must rely on applicants for many of the facts upon which its decisions are based. highest standards of honesty and candor on the part of applicants in presenting such facts to the office are thus necessary elements in a working patent system. We would go so far as to say they are essential. It follows, therefore, that we do approve of the indicated expansion of the types of misconduct for which applicants will be penalized." Id.

Although there seems to be confusion between fraud and the "unclean hands" doctrine, it is clear that the

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"but for" effect on the granting of the patent which is a prerequisite for a finding of fraud is not required for a finding that the "unclean hands" doctrine has been violated.

SCM Corp. v. Radio Corp. of America, supra, at 449.

Courts seem to have had some difficulty in formulating a test for determining whether or no the misconduct of an applicant is of the nature that his patent should not be enforced. The Third Circuit, in Monsanto Co. v. Rohm & Maas Co., supra, at 599, said that the test is "whether the applicant for a patent has 'displayed that standard of conduct requisite to the maintenance of a suit in equity,'" and that "[b]asically the issue resolves itself to a determination whether the representation to the Patent Office * * was 'tainted with inequitableness.'" In Xerox Corp. v. Dennison Mfg. Co., 322 F.Supp. 963, 968 (S.D.N.Y. 1971), Judge Mansfield, then a District Judge, offered this guidance in resolving the problem:

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"* * * the basic underlying theme is that there must be some element of wrongfulness and willfulness or bad faith that transgresses the basic concept of doing equity."

The evidence in the present case must be weighed with these general guidelines and principles in mind.

The failure of the defendant to cite the Pupier and Lillard patents is not a violation of the duty of candor and good faith owed by applicants to the Patent Office.

The Second Circuit has indicated that the failure to bring prior art to the attention of the examiner hinges on the question of its importance. Carter-Wallace, Inc. v. Davis-Edwards Pharmacal Corp., supra. The Pupier and Lillard patents are, respectively, for a device for applying heat to the back of the head, and for a heated inner sole for a

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shoe, and are of little or no relevance to the Arron sock patent. Further, an applicant for a patent retains the right to exercise good faith judgment in deciding what matters are or are not of sufficient relevance and materiality to require disclosure. Xerox Corp. v. Dennison Mfg. Co., supra, at 958. Arron made the judgment that the two patents were not relevant to his sock application. This judgment appears to be reasonable. There is no violation of any duty Arron owed to the Patent Office. Therefore, the sock patent is not unenforceable on that ground.

Arron's conduct in relation to the Rule 131 affidavit is of a different nature and mandates a different conclusion. Taken together, the two alterations and Arron's failure to disclose his relationship with Costanzo indicate that Arron acted in disregard of the duty of frankness he owed to the Patent Office. The evidence shows that Arron's conduct was both willful and in bad faith. Keeping in mind both the cases which set forth and discuss the high degree of candor and good faith owed by an applicant to the Patent Office, * and the purpose of the "unclean hands" doctrine in patent cases which is to discourage applicants from taking advantage of the essentially ex parte nature of the Patent Office proceedings, this Court holds that the sock patent (assuming validity) should not be enforced because of Arron's conduct before the Patent Office in connection with his Rule 131 affidavit.

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Kingsland v. Dorsey, supra; Precision Instrument
Mfg. Co. v. Automotive Maintenance Machinery Co., supra;
Norton v. Curtiss, supra; Carter-Wallace, Inc. v.
Davis-Edwards Pharmacal Corp., supra.

The validity of the Arron heater patent.

Arron filed his application for the heater patent on March 4, 1969. However, because the application was a continuation-in-part* of a previously abandoned application, the effective date was the filing date of the original application, November 29, 1966. The patent, entitled "Electrical Heating Element For Apparel," U.S.Patent No. 3,524,965, was granted on August 18, 1970.

The Arron heater patent discloses a heating element consisting of a flat resistance ribbon adhesively sandwiched between two strips of flexible covering material at least as long but wider than the ribbon. The heating element is attached to a body garment by a row of stitches along each of its outer longitudinal edges. The patent also discloses the use of materials for covering, reflection and/or insulation.

The patent consists of 10 claims, all of which are variations of the same concept. Claim 1 is typical of the claims and discloses the basic heating element concept found in each of the other claims. It reads as follows:

"1. A body garment having a heating element to supply heat to a user comprising an elongate strip of electrical resistance ribbon, two strips of flexible material with each strip being elongate and at least as long as said ribbon and having a width larger than the width of the ribbon, one of said strips being positioned on one side of said ribbon and the other strip being positioned on the other side of said ribbon, means adhesively secur-

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^{*} The new matter in the second patent application disclosed a heating element mounted on an insulating pad. It contains the basic heating element construction disclosed by the prior application.

ing together the abutting surfaces of the ribbon and the strips, electrical connecting means connected to said ribbon and extending downwardly from said strips, said strips being substantially wider than the ribbon, stitching means securing only the outer edge portions of the strips to a garment and including a row of stitching extending along each outer edge portion of the strips, said rows being spaced from and on either side of the ribbon, a fabric covering overlaying said element with the rows of stitches also securing said covering to said garment and in which the electrical connecting means includes a length of wire attached to each end of the ribbon, one of said wires being disposed between the fabric covering, the garment and the rows of stitching."

Costanzo has challenged the validity of the Arron patent on a number of grounds, the two most important of which are, that the invention was "on sale" for more than one year prior to the filing date, and that the invention was obvious.

Costanzo's "on sale" argument is based on 35 U.S.C. \$ 102(b), which provides, in pertinent part:

"A person shall be entitled to a patent unless -

"(b) the invention was * * * on sale in this country, more than one year prior to the date of the application for patent in the United States."

This section is similar to a one-year statute of limitations within which an inventor, even though he has made a patentable invention, must act. If the sale is more than one year prior to the actual filing date, a statutory bar is established which results in the loss of the right to a patent. Application of Foster, 343 F.2d 980 (C.C.P.A. 1965).

Section 102(b) is concerned with the actions of an inventor once he makes an invention that is patentable. The inventor must act with deliberate speed in filing his patent application or his right to a legal monopoly will be barred

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by the statute. Dix-Seal Corp. v. New Haven Trap Rock Co., 236 F.Supp. 914 (D.Conn. 1964).

The purpose of § 102(b) is to prevent the exploitation of inventions except by legal monopoly and to encourage disclosure of new inventions in order that the public may be given the fruits of discovery as soon as possible. Pennock v. Dialogue, 27 U.S. (2 Pet.) 1, 19 (1829). Also, the prevention of abuse and evasion of the patent laws has been accepted by courts as an important purpose of the statutory bar. Cali v. Eastern Airlines, Inc., 442 F.2d 65 (2d Cir. 1971; Metallizing Engineering Co. v. Kenyon Bearing & Auto Parts Co., 153 F.2d 516 (2d Cir.), cert. denied, 328 U.S. 840 (1946).

"What starts the period running is clearly the availability of the invention to the public * * *."

Application of Foster, supra, at 988. Recently the Ninth Circuit, in Robbins Co. v. Lawrence Manufacturing Co.,

482 F.2d 426, 431 (9th Cir. 1973), held that activity not resulting in a sale can constitute an "on sale" defense, and said:

"'On sale' does not mean an actual accomplished sale but activity by the inventor or his company in attempting to sell the patented idea.

* * * A simple placing on sale is sufficient to establish the 'on sale' defense * * * ."
(Citations omitted.)

Accord, Amphenol Corp. v. General Time Corp., 397 F.2d 431 (7th Cir. 1968). On facts analogous to the present case it was held, in Merry Hull & Co. v. Hi-Line Co., 243 F. Supp. 45 (S.D.N.Y. 1965), that the modeling of overalls at a showing constituted a placing "on sale" of the garment for the purposes of Section 102(b).

In the present case the effective date of the

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application was November 29, 1966. Thus, November 29, 1965 is the crucial date before which the invention must have been "on sale" for Arron to lose his right to a patent under § 102(b).

Costanzo contends that a sock containing a heating element similar to the element disclosed by the heater patent was placed on sale prior to November 29, 1965. Plaintiff is undoubtedly correct.

The element in question was contained in a sock manufactured by Seneca Knitting Mills under an agreement with Stanley Arron. This sock (hereafter the "Seneca sock") was an embodiment of the concept disclosed by the Arron sock patent. It was advertised in the November 1965 issue of Outdoor Life. Costanzo did not establish the exact date on which the magazine became available to the public, but it is common knowledge that the November issue of a magazine would be available at least by an early date in November. Certainly the date of publication would be prior to November 29, 1965.

Emanuel Piller, who in 1965 operated a mail order house called Alexander Sales, testified that he placed the advertising for the November issue of Outdoor Life. Piller estimated that he sent the first proof of the advertisement to the magazine about mid-September 1965. He also testified that Arron had shown him a Seneca sock and that he had agreed to buy the sock for Alexander Sales about the same time.

Arron's activity constitutes placing the Seneca sock "on sale." Robbins Co. v. Lawrence Manufacturing Co., supra; Merry Hull & Co. v. Hi-Line Co., supra. Although

Costanzo failed to establish an exact date, it is clear from the evidence that the Seneca sock was placed "on sale" prior to November 29, 1965. Arron does not dispute this evidence. In fact, he does not directly challenge the entire "on sale" argument. However, Arron's position seems to be that the heating element in the Seneca sock is not the same as the heating element disclosed by the heater patent.

Exact identity between the invention disclosed by the patent and the item placed "on sale" is not required.

The general rule is set forth in 2 Walker Patents, at 684-85 (Deller's 2d Ed. 1964):

"Precise identity between the thing covered by the patent and the thing which the inventor allowed to be in public use or on sale more than the statutory period before he applied for the patent is not necessary to constitute constructive abandonment of the invention covered by the latter. It is enough if the two devices are substantially the same or if the advance from one to the other did not amount to invention." (Footnotes omitted.)

The invention is complete if it is "capable of producing the results sought to be accomplished, though not as thoroughly as" a later improvement. Hall v. Macneale, 107 U.S. 90, 97 (1882). In Smith & Griggs Mfg. Co. v. Sprague, 123 U.S. 249 (1887), a case in which the inventor made substantial changes after public use of the machines, the Supreme Court found that exact identity was not required and held the invention to be nonpatentable. The First Circuit, in National Biscuit Co. v. Crown Baking Co., 105 F.2d 422, 427 (1st Cir. 1939), in holding a patent invalid under § 102(b), said:

"Undoubtedly the machines on the alleged prior use must be capable of being operated commercially, but it is not necessary to prove that such earlier machines were as

efficacious as the one for which the patent was granted. * * * If they embodied substantially the principles and elements of the invention, they invalidated the patent." (Citation omitted.)

Accord, Tri-Wall Containers, Inc. v. Continental Can Co., 323 F.Supp. 700 (S.D.N.Y. 1971); Dix-Seal Corp. v. New Haven Trap Rock Co., supra.

There must be a patentable difference between the item sold and the item for which a patent is sought or the statutory bar applies. International Tooth Crown Co. v. Gaylord, 140 U.S. 55 (1891). What is actually sold is the article itself and all improvements on the article which would be obvious to one skilled in the art. Tool Research & Engineering Corp. v. Honcor Corp., 367 F.2d 449 (9th Cir. 1966); Application of Foster, supra.

Arron claims that the heater patent was an improvement over the Seneca sock because it prevented the twisting of the heating element. In the Seneca sock the covering material was wrapped around and adhesively secured to the resistance ribbon. The heating element was attached to the sock by one line of stitches. In the heater patent the resistance ribbon was fused between two layers of covering material and attached to the sock with two lines of stitching The only possible differences between the two socks were the manner in which the covering material was attached to the resistance ribbon and the addition of a second row of stitches to attach the heating element to the sock. Dubrow, the defendant's expert, testified that the methods of securing the covering material to the resistance ribbon were generally the same in both socks. Plaintiffs' patent expert, Weinstein, Arron, and Dubrow all testified that the only differ-

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ence between the Seneca sock and the heater patent was the addition of a second row of stitching. Weinstein specifically testified that that difference was not patentable. This conclusion is reasonable. The addition of a second row of stitching to solve the anchoring problem certainly would be obvious to a person skilled in the art. Therefore, the difference between the Seneca sock and the Arron heater patent is not sufficient to prevent the establishment of the statutory bar.

Arron loses his right to secure the heater patent under the provisions of § 102(b), since a sock embodying the concept of the heater patent was placed "on sale" prior to November 29, 1965.

Costanzo also claims that the Arron heater patent is invalid under 35 U.S.C. § 103 for obviousness. Once again, the test for obviousness is a determination of the scope and content of the prior art, ascertainment of the differences between the prior art and the claim at issue, and a resolution of the level of ordinary skill in the pertinent art. Graham v. John Deere Co., supra. And again reference is made to the general standards of obviousness discussed above pp. 4-5) in connection with the Costanzo patent.

The initial question is whether or no the Arron sock patent, and therefore the Seneca sock, are prior art.

Arron, relying on Illinois Tool Works, Inc. v. Solo Cup Co.,

Inc., 461 F.2d 265 (7th Cir.), cert. denied, 407 U.S. 916 (1972), asserts that it is not. Defendant's reliance is misplaced. The two patents held by plaintiff in issue in Illinois Tool Works, Inc. related to nestable expandable cups.

The court held that the disclosure to the public of the invention by the patent application and the cups sold under that application were not available as prior art against the same inventor's later related invention where both the second application was filed and the sale of the cups took place within a year of the initial public disclosure. The court relied upon a line of decisions in the Court of Customs and Patent Appeals, and said:

"'But certainly one's own invention, whatever the form of disclosure to the public, may not be prior art against oneself, absent a statutory bar.' Obviously, the statutory bar referred to above pertains to the one-year period during which Congress has allowed an inventor to perfect, develop and apply for a patent pursuant to 35 U.S.C. § 102(b)." 461 F.2d at 269-70.

The court found that the one-year limitation had not been exceeded. Illinois Tool Works, Inc. supports the use of the Arron sock patent and the Seneca sock as prior art, since the statutory bar has been established by the sale of the Seneca sock more than one year prior to the effective filing date of the heater patent.

In Dix-Seal Corp. v. New Haven Trap Rock Co., supra, the patent at issue had been disclosed in a publication and by public use more than one year prior to the date of the patent application. Judge Blumenfeld, in discussing the effect of the statutory bar of § 102(b) on the use of the invention as prior art, states:

"Once in public use that invention becomes prior art and as to all later discoveries in that field anyone else must then show some 'patentable' change to obtain the legal monopoly. Once the year in which to prepare and file his application has passed, the employment of a standard of patentability less stringent against the first inventor than against these others would seem to impair, if not defeat, congressional policy. There

should be no distinction between prior art of the inventor's own making and that of others." 236 T.Supp. at 920.

Clearly, the Arron sock patent and the Seneca sock are prior art on the issue of obviousness of the Arron heater patent. In addition, the prior art includes the Costanzo sock patent at issue in this case, and the Jacobsen and Taylor patents.

The Arron sock patent teaches the use of a covering material wrapped around and secured adhesively to the resistance ribbon and the securing of the heating element to the sock by a single row of stitches. Costanzo teaches the sandwiching of the heating element between two sheets of covering material in a heat transfer relationship.

Jacobsen, numbered 2,329,766 (1943), teaches the use of stitching on all sides of the heating element. Taylor, numbered 2,287,915 (1942), teaches the sewing of a heating element to a fabric back.

Neither the fusing of the two layers of the covering material to the resistance ribbon nor the securing of the heating element to the sock by two rows of stitches along the element's longitudinal edge are specifically disclosed by the prior art.

as for the Costanzo and Arron sock patents. The evidence indicates that in 1966 the level of ordinary skill in the electrically heated apparel art was of people with electrical engineering degrees and/or an extensive practical knowledge of electricity and the use of batteries, combined with experience in the electrically heated clothing field.

The usual presumption of validity is substantially weakened because the Taylor, Jacobsen and Arron sock patents

were not considered as prior art by the Patent Office.

Reeves Bros. v. U.S.Laminating Corp., 417 F.2d 869, 872

(2d Cir. 1969).

Dubrow, the defendant's expert, testified that the methods of securing the covering material to the heating element in the Arron sock patent and the heater patent were not significantly different. Weinstein, plaintiffs' patent expert, testified that the additional row of stitching was not patentably different from the Arron sock patent. The conclusions of Dubrow and Weinstein relating to the Arron sock patent are buttressed by a consideration of the other relevant prior art patents -- Costanzo, Jacobsen and Taylor.

The differences between the heater patent and the prior art are insubstantial. The heater patent was obvious in light of the prior art to a person with ordinary skill in the art. See, Julie Research Laboratories, Inc. v. Guildline Instruments, Inc., supra; Supreme Egpt. & Systems

Corp. v. Lear Siegler, Inc., supra; Triax Co. v. Hartman Metal Fabricators, Inc., supra; Burgess Cellulose Co. v. Wood

Flong Corp., supra; Formal Fashions, Inc. v. Braiman Bows, Inc., supra.

We do not discuss the plaintiffs' other arguments since we find them to be without merit.

Both plaintiffs and defendants Stanley Arron and Visa-Therm allege claims for infringement of their respective patents. Since we do not reach the issues of infringement because of the invalidity of each of the three patents in issue, plaintiffs' and defendants' claims for infringement are dismissed.

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PPI-Saudatone 5-3-72-10011-9401 Although the resolution of the claims and counterclaims relating to the three patents has been made, other claims and counterclaims are involved, as are other parties.

Parties.

The original parties to the lawsuit were Timely
Products Corporation and Raphael Costanzo, plaintiffs,
against Stanley Arron, Max Arron, Anna Arron and Visa-Therm
Products, Inc., defendants. Timely is the exclusive
licensee of the Costanzo "invention" and of the Costanzo
patent. Max and Anna Arron are the parents of Stanley
and were at one time officers and directors of Visa-Therm
Products, Inc., the manufacturer of socks under the Arron
patents.

The defendants Stanley Arron and Visa-Therm were permitted* to bring in as parties defendants to their counterclaims to the second amended complaint, Benjamin M. Hines and Lois D. Hines. For some unexplained reason the Hines have acquired the appellation "counterdefendants," and the defendant Stanley Arron, "counterplaintiff."

All parties are citizens and residents of Connecticut, including the two corporations. Max Arron died during the course of the litigation and his widow, Anna, as his executrix, has been substituted for him.

Plaintiffs' Second and Third Claims.

These two claims are not easily paraphrased.

Obviously plaintiffs were attempting to state in each a claim for "unfair competition" so as to bring themselves under the pendent jurisdiction authorized by 28 U.S.C.

Order of Judge Zampano, 303 F. Supp. 713 (D.Conn. 1969).

§ 1338(b), which states:

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"The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trade-mark laws."

The second claim is made on behalf of the plaintiff Costanzo, while the third claim is made on behalf of the plaintiff Timely. Each claim alleges substantially the same facts, namely, that Costanzo and Stanley Arron became associated in 1963 as equal shareholders in a corporation called Stanzo Electronic Industries, Inc. for the purpose of producing and marketing a small electric stove and several other items. It was part of the agreement that no other idea or invention or patent belonging to Costanzo would be part of the corporate assets, and upon dissolution of the corporation all such items would revert to Costanzo. It is then alleged that during the Costanzo-Arron association, Costanzo invented a battery heated electric sock and filed a patent application for it on September 13, 1965, which resulted in the plaintiff's patent in suit. Costanzo then alleges that prior to filing his patent application he disclosed his invention in confidence to Arron, and that thereafter he and Arron attempted, both jointly and separately, to promote the sale of such sock to several potential buyers; that on December 27, 1965, Costanzo entered into an exclusive licensing agreement with Timely, and that the next day he revoked Arron's authority to promote the sock. He further alleges that late in 1965 or early 1966, Stanley Arron, in violation of plaintiff's proprietary rights, entered into a contract with Seneca Knitting Mills licensing it to manufacture Costanzo's sock, and subsequently, with his

FFI-Saudatone 5-3-72-100M-040 co-defendants Max and Anna Arron, Stanley Arron organized a corporation called Visa-Therm Products, Inc. as a device to further appropriate Costanzo's invention and by such conduct the defendants are "unfairly competing with and interfering with plaintiff's Costanzo's right to exclusively license to plaintiff's Timely Products Corporation the right to make, use and sell the electrically heated sock embodying his invention."

Plaintiffs' counsel, in his different briefs, has paraphrased the nature of the second claim as follows:

- "* * * for misappropriation of Costanzo's trade secrets and proprietary information * * *." (Plaintiffs' Pre-trial Brief at 2).
- "* * Arron willfully appropriated Costanzo secrets and know-how in and to the Costanzo electric sock invention, * * * and that Arron, together with Max and Anna Arron, formed Visa-Therm Products for the sole purpose of appropriating and converting to their own use the benefits and profits derived in the use and sale of Costanzo's electric sock invention." (Plaintiffs' Pre-trial Brief at 5-6).

And most recently, in a Memorandum to the Court long after the trial, referring to the Supreme Court decision in Kewanee Oil Company v. Bicron Corporation, 42 U.S.L.W. 4631 (U.S. May 13, 1974), plaintiffs' counsel said:

"The Kewanee decision, supra, clearly supports Plaintiffs' contentions that Plaintiffs' claim of trade secret appropriation by the Defendants prior to the issuance of the Costanzo patent in suit is consistent and compatible with Plaintiffs' claim of patent infringement subsequent to the issuance of the Costanzo patent in suit. This decision clearly states that an invention, be it one that can be patented or not, and if it is secret and not of public knowledge, constitutes a valid trade secret which the law will protect against an appropriator thereof, until such time that the invention is fairly disclosed."

In replying to defendants' Post-trial Brief he states:

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"For a case virtually in point to the facts of this case reference is made to Plastic & Metal Fabricators, Inc. v. Roy. [163 Conn. 257 (1972)]." Reply to Defendants' Post-trial Brief at 27.

Whether the claims of patent validity and infringement alleged by plaintiffs can be considered "a substantial and related claim under * * * patent laws," we need not decide, nor need we decide whether the claims alleged in the Second Cause of Action and Third Cause of Action assert claims for "unfair competition." Cf., Judge Learned Hand's classic statement in Yale Electric Corp. v. Robertson, 26 F.2d 972, 973 (2d Cir. 1928):

"The law of unfair trade comes down very nearly to this - as judges have repeated again and again - that one merchant shall not divert customers from another by representing what he sells as emanating from the second. This has been, and perhaps even more now is, the whole Law and the Prophets on the subject, though it assumes many guises."

and Mr. Justice Brandeis' dissent in <u>International News</u>
Service v. Associated Press, 248 U.S. 215, 257-67 (1918).

We will accept plaintiffs' theory of the claims and apply it to the evidence. The evidence at trial does not support any of plaintiffs' claims or theories.

Costanzo and Arron were, for all practical purposes, partners. They had entered into an agreement to form Stanzo Electronic Industries, Inc. and to divide the stock equally between them. The purpose of the corporation was to exploit an electric stove and other items. No mention was made of any electric sock invention, although the agreement did provide that in the event of a dissolution of the corporation all inventions and ideas contributed to the corporation by Costanzo would be returned to him. Thereafter, Arron and Costanzo both and separately attempted to interest others in the electrical battery operated sock that Costanzo

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had "invented." Such people, whether being opportuned by Costanzo or Arron, would sign a form of an agreement that they would hold in confidence the disclosures made concerning the electrically operated sock. Arron was never asked to sign such a form, nor did he ever. It was Costanzo's position at trial that he disclosed the sock invention to Arron in confidence and with a counterpromise by Arron not to disclose any of the information so acquired. We find that Arron was completely informed by Costanzo of the sock and its operation and without any counterpromise to secrecy, and specifically there was no promise not to disclose. Parenthetically, in the first agreement, dated December 27, 1965, that Costanzo made with Benjamin Hines him and his assignee the exclusive license to manufacture the Costanzo invention, and later the patent, Costanzo represented that he never disclosed the invention to anyone. We find, as we indicated, that he did disclose it to his "partner" in an attempt to exploit it, without any promise or expectation that Arron would not disclose it.

The "invention" of Costanzo was a patentable article under 35 U.S.C. § 101 and was not a trade secret, as was the process in the Plastic & Metal Fabricators case, supra, so heavily relied upon by Costanzo. This process, the trial court found, was disclosed to the defendant in confidence and the defendant so understood.

Kewanee is not to the contrary. There the process was a trade secret under Ohio law and the individual defendants, former employees of Kewanee, signed an agreement as a condition of employment not to disclose trade secrets. The Supreme Court held that trade secret laws protect items which

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would not be proper subjects for consideration for patent protection under 35 U.S.C. § 101.

In sum, the Costanzo "invention," until it was patented, was in the public domain and was not protected from either copying or disclosure. Sears, Roebuck & Co. v. Stiffel, 376 U.S. 225 (1964) and Compactor Corporation v. Day-Brite Lighting, Inc., 376 U.S. 234 (1964), are controlling. These cases held that when an article is not protected by a patent, State law may not forbid others to copy it, because every article not covered by/valid patent is in the public domain.

The Robinson-Patman Act Claim.

Plaintiffs' fourth and final claim alleges that the defendants violated the Robinson-Patman Act, 15 U.S.C. § 13, the Clayton Act, 15 U.S.C. §§ 15, 26, and the Sherman Act, 15 U.S.C. §§ 1-7, by lowering the price of their socks for the purpose of destroying and eliminating the plaintiff, Timely Products Corporation, as a competitor.

The only evidence offered by the plaintiffs in support of their claim is that on October 15, 1970, defendants sold 480 pairs of electrically heated socks called WS 1 Warm Soks to Stem Distributing Co. of Maple Heights, Ohio, at \$3.75 per pair, although the defendants' price list (P.Ex. 301-B) indicates that the usual price for such socks was \$4.25 to \$4.50 per pair; and that five days after the sale to Stem Distributors, defendants sold 638 pairs of WS 1 Warm Soks to M. Sharf & Company of Somerville, Mass. for \$4.25 per pair. The defendant, Stanley Arror admitted the sales at those prices. Plaintiffs also proved, arough Richard L.

Johnson, Vice President in Charge of Sales for Timely Products Corporation, that plaintiffs sold socks to Stem Distributors in 1968 and 1969, and that in 1970 Stem Distributors did not place an order for socks with Timely Products Corporation.

Plaintiffs' claim falls under § 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a).* The basic elements of a cause of action under that section are: (1) a difference in price between different purchasers of commodities of like grade and quality, (2) occurring in interstate commerce, (3) which causes the proscribed injury to competition, and (4) the absence of the statutory defenses. Guyott v. Texaco, Inc., 261 F.Supp. 942 (D.Conn. 1966).

Price discrimination is not, per se, illegal.

F.T.C. v. Simplicity Pattern Co., 360 U.S. 55, 64 (1959).

Price differentials alone are not enough for a violation of the Robinson-Patman Act.

F.T.C. v. Anheuser-Busch, Inc.,

Section 13(a) reads in pertinent part:

"§ 13. Discrimination in price, services, or facilities - Price; selection of customers.

"(a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States * * *, and where the effect of such discrimination may be substantially to lessen competition or tend to creat a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them * * * ."

363 U.S. 536 (1960); Crest Auto Supplies Inc. v. Ero Mfg. Co., 360 F.2d 896 (7th Cir. 1966). "It is the effect upon competition that must be shown before there is a violation and it must be substantial or that there is a reasonable probability that it may be substantial."

National Dairy Products Corp. v. F.T.C., 412 F.2d 605, 617 (7th Cir. 1969.)

"Congress has not outlawed price differentials per se, unjustified though they may be. The Act was not intended to reach every remote, adverse effect on competition. The effect must be substantial. * ** 'And we construe the Act to require substantial, not trivial or sporadic, interference with competition to establish violation of its mandate.' If the discrimination complained of does not, cannot or will not have the defined effect of injury to or substantial lessening of competition, or tendency to create a monopoly, the Act has not been violated * * * ." (Citations omitted.)
Whitaker Cable Corp. v. F.T.C., 239 F.2d 253, 256 (7th Cir.), cert. denied, 353 U.S. 938 (1957).

The Robinson-Patman Act "is concerned primarily with possible injury to competition and not to competitors."

Hampton v. Graff Vending Co., 478 F.2d 527, 533 (5th Cir.),

cert. denied, 414 U.S. 859 (1973). Injury to a seller is

to be distinguished from injury to the vigor of competition.

Borden Co. v. F.T.C., 381 F.2d 175 (5th Cir. 1967). In

Anheuser-Busch, Inc. v. F.T.C., 289 F.2d 835, 840 (7th Cir.

1961), in finding that the F.T.C. failed to prove that a

brewer's reduction in price in one market caused any present,

actual injury to competition, the court said:

"The Act is really referring to the effect upon competition and not merely upon competitors. * * * In this respect § 2(a) must be read in conformity with the public policy of preserving competition, but it is not concerned with mere shifts of business between competitors. It is concerned with substantial impairment of the vigor or health of the contest for business, regardless of which competitor wins or loses. * * * 'Antitrust legislation is

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concerned primarily with the health of the competitive process, not with the individual competitor who must sink or swim in competitive enterprise.'" (Citations omitted.)

The plaintiffs have shown that the same commodity was sold for a different price in interstate commerce. However, they have failed to prove any injury or possible injury to competition. The plaintiffs' conclusory argument cannot supply the factual evidence of competitive harm necessary for proof under the Robinson-Patman Act. See, Baum v. Investors Diversified Services, Inc., 286 F.Supp. 914 (N.D.III. 1968), aff'd. 409 F.2d 872 (7th Cir. 1969). There was no proof of any predatory practices, general decline in the price structure, or below cost sales. See, Utah Pie Co. v. Continental Baking Co., 386 U.S. 685 (1967). The only proof of a possible effect of the price distrimination was that Stem Distributing Co. did not reorder products from the plaintiff, Timely Products Corporation. This demonstrates the effect of the price discrimination on a competitor and not upon competition. Anheuser-Busch, Inc. v. F.T.C. 289 F.2d 835 (7th Cir. 1961). Further, even assuming the price discrimination affected competition, the effect is hardly substantial. See, Whitaker Cable Corp. v. F.T.C., The plaintiffs' Robinson-Patman Act claim must fail supra. for lack of sufficient proof. Because they are dependent upon the price discrimination claim, the Sherman and Clayton Acts references are of no effect. The plaintiff's fourth claim is therefore dismissed.

Defendants Arron's and Visa-Therm's Counterclaim of Unfair Competition.

Not to be outdone by plaintiffs' claim of unfair competition, defendants Stanley Arron and Visa-Therm alleged

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that they, too, have been damaged by plaintiffs' unfair competition. Like the plaintiffs', their evidence at trial did not support the pleading. Although the pleading of this claim relates to the alleged misappropriation by Costanzo of defendant Stanley Arron's idea, i.e., the idea of producing and marketing an electric sock, and to the alleged libelous letters written by plaintiffs to defendants' customers and their bank, not to advise of a potential patent claim, but to destroy their reputation and credit.

The evidence at trial related principally to the defendant Stanley Arron's dealings and contract with Seneca Knitting Mills and the cancellation of that contract, and to the letters that plaintiffs sent to defendants' customers and to their bank.

Assuming such proof is a form of "unfair competition" countenanced by 28 U.S.C. § 1338(b), we find the proof totally insufficient.

There is no doubt that Arron entered into a written contract with Seneca Knitting Mills to manufacture a sock to be heated by a battery, on which Arron was to receive a certain royalty per pair. But the plaintiffs, or either of them, did not cause the cancellation of that contract. The defendant Arron caused the cancellation himself by accusing the Mill of being unable to produce socks competitively and for not keeping accurate records. These charges were contained in a letter of cancellation written by Arron to the Mill on March 24, 1966. The Mill agreed to cancellation but also accused Arron of warranting that he had patent rights in the sock, when he had none.

With reference to the letters that plaintiffs admittedly sent to the customers and the bank, these letters merely called attention to the issuance of the patent, which is permitted by statute, 35 U.S.C. § 287. The letter to the Lafayette Bank was sent on the theory that it was contributing to the infringement of Costanzo's patent, i.e., that it was lending money to Arron and was aware of the use to which Arron was putting the money. Whether the bank was in fact a contributory infringer is beside the point. The plaintiffs were entitled to send notices of infringement in good faith. United States Galvanizing & Plating Equipment Corp. v. Hanson-Van Winkle-Munning Co., 104 F.2d 856, 861-62 (4th Cir. 1939). was no evidence or proof of bad faith. Accordingly, this claim, labeled "Second Counterclaim to the Second and Third Causes of Action," is dismissed for failure of proof.

The counterclaim of Benjamin M. Hines and Lois D. Hines.

In the Reply to defendants Stanley Arron's and Visa-Therm's counterclaim with respect to defendants' United States patents, Benjamin M. Hines and Lois D. Hines, "counter-defendants," sought a declaratory judgment, as did the plaintiffs, of non-infringement, invalidity, and non-enforcement of Arron's two patents.

We have previously resulted this issue insofar as it relates to the plaintiffs. Therefore, the counterclaim of Benjamin M. Hines and Lois D. Hines is moot and is dismissed.

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Attorneys' Fees and Costs.

Plaintiffs and defendants Stanley Arron and Visa-Therm seek attorneys' fees. Such requests are denied.

35 U.S.C. § 285 states that the Court may, in exceptional cases, award attorneys' fees to the prevailing party. There is no prevailing party in this lawsuit with the exception of Anna Arron, but this is not an exceptional case.

Plaintiffs also request attorneys' fees in their antitrust claim, which we dismissed. This request is also denied. 15 U.S.C. § 15 provides for reasonable attorneys' fees but such fees are for a successful party. Alden-Rochelle, Inc. v. American Soc. of Composers and Publishers, 80 F.Supp. 888 (S.D.N.Y. 1948).

All parties to this litigation request costs.

28 U.S.C. § 1920 provides for costs but they are discretionary. We find that the entire lawsuit on both sides was frivolous and vindictive, and that no party is entitled to costs.

Rule 54(d) of the Federal Rules of Civil Procedure provides that costs shall be allowed as of course to the prevailing party. Even under this Rule the awarding of costs is discretionary. Hill v. Gonzalez, 53 F.R.D. 1 (D.Minn. 1971).

With one exception, no party prevailed. That party is Anna Arron, both individually and as executrix of the Estate of Max Arron. She prevailed on all the claims of the plaintiffs against her and did not counterclaim against any party. However, as a matter of discretion, no costs are awarded to her.

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CONCLUSIONS

The Clerk is hereby directed to enter judgment in favor of the defendants on plaintiffs' Second Amended Complaint, which is dismissed.

The Clerk is further directed to enter judgment in favor of the plaintiffs and Benjamin M. Hines and Lois D. Hines dismissing the counterclaims to the Second Amended Complaint of defendants Stanley Arron and Visa-Therm Products, Inc.

The Clerk is further directed to enter judgment dismissing the counterclaim of Benjamin M. Hines and Lois D. Hines against defendants Stanley Arron and Visa-Therm Products, Inc.

The judgment so ordered shall in addition declare that the United States Patents numbered 3,293,405, 3,392,264 and 3,524,965 are invalid.

Costs and attorneys' fees for all parties are denied.

Let this Memorandum stand for our findings of fact and conclusions of law pursuant to Rule 52.

Thomas F. Murphy Senior United States District Judge

Dated: Waterbury, Ct., August 3/ , 1974.

United States District Court

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FOR THE

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DISTRICT OF CONNECTICUT

U. S. DISTRICT COURT NEW HAVEN, CONN.

CIVIL ACTION FILE NO. 11,864

TIMELY PRODUCTS CORPORATION, ET AL

vs.

JUDGMENT

STANLEY ARRON, ET AL

(RABLE) and a CHERKYMENERSKERS

(1) that judgment be and is hereby entered in favor of the defendants, dismissing plaintiffs' Second Amended Complaint;

- (2) that judgment be and is hereby entered in favor of the plaintiffs and Benjamin M. Hines and Lois D. Hines, dismissing the counterclaims to the Second Amended Complaint of defendants Stanley Arron and Visa-Therm Products, Inc.;
- (3) that judgment be and is hereby entered dismissing the counterclaim of Benjamin M. Hines and Lois D. Hines against defendants Stanley Arron and Visa-Therm Products, Inc.;
- (4) that United States Patents numbered 3,293,405, 3,392,264 and 3,524,965 be and are hereby declared invalid; and
- (5) that costs and attorneys' fees for all parties be and are hereby denied.

Dated at New Haven, Connecticut

this 9th

day

of September , 1974 .

SYLVESTER A. MARKOWSKI

Clerk of Coup

(VII)

Charge

U. S. DISTRICT COURT NEW HAVEN, COMM.

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UNITED STATES DISTRICT COURT DISTRICT OF COMMECTICUT

TIMELY PRODUCTS CORPORATION, et al.,

Plaintiffs,

CIV. No. 11,864

STANLEY ARROW, et al.,

V8.

MEMORANDUM

Defendants.

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MURPHY, D.J.

Defendants' motion pursuant to Rule 52(b) of the Federal Rules of Civil Procedure for an amendment of our findings and to make additional findings and to amend the judgment accordingly is denied.

This is an order. No settlement is necessary.

THOMAS F. MURPHY

Thomas F. Hurphy Senier United States District Judge

Dated: Waterbury, Ct., October 9, 1974.

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UNITED STATES DISTRICT COURT U.S DISTRICT COURT DISTRICT OF CONNECTICUT NEW HAVEN. CONN.

Raphael J. Costanzo, Plaintiff Civil Action 11864 Stanley Arron et al, Defendants

Notice of Appeal

Notice is hereby given that Raphael J. Costanco, Plaintiff in the above Identified action, hereby appeals to the United States Court of Appeals for the Second Circuit from the final order and judgment entered in this action on the 9th day of September 1974, and reaffirmed by the order entered on October 11, 1974.

This appeal is taken pursuant to Rule 4(a) of the Federal Rules of Appellate procedure, paragraph 2 (2).

Arthur T. Fattibene

Attorney Costanzo

2480 Post Rd.

Fairfield, Conn. 06430 (255-4400)

Dated: Och 31, 1974

FORM C

UNITED STATES COURT OF APPEALS

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CIVIL APPEAL PRE-ARGUMENT STATEMENT	(Attach additional sheets if space is not sufficient)	
(To be filed by appelant with Clerk of Court of Appeals and served on other parties within ten days after filing notice of appeal.)	APPEAL FROM DISTRICT COURT	
CASE TITLE (Complete)	DISTRICT COURT CONNECT ICUT	
Paphael J. Costanzo,	DOCKET NUMBER CLV. Act. 11864	
· . Appellant (Plaintiff)	DATE FILED IN NO. DAY YEAR 15 1967	
vs.	APPEAL FILED 11 4 1974	
Sec. 1	RELATED CASE(S)	
Stanley Arron, Anna Arron, Visa-Therm Products, Inc.,		
Max Arron, Appellees (Defendants)	Is this a cross appeal YES NO	
COUNSEL NAME FOR APPELLANTS: ADDRESS	TELEPHONE	
Arthur T. Fattibene 2480 Fost Road, Fairfield, 203-255-4400		
Connecticut 06	Fairfield, 203-255-4400	
FOR APPELLEES:		
Attorney Below: 855 Main Street Ernest Junkins		
Bridgeport, Cont		
Edward Kunin 185 Golden Hill Street		
(Check One Box Only) Bridgeport, Conn. NATURE OF SUIT		
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Appellant, plaintiff below alleged patent infringement, of claim 2 of his U.S. Defendant's appellee counterclaimed infringement of their patents U.S. 332,264 and unfair competition. Court held (1) plaintiff appellant despite rinding that Defendants patent invalid and dismissed the complaint; and denied cost and attorney fees unclean hands during Patent Office prosecution and Defendants patent 3,524,965 invalid and unenforceable for 3,524,965 invalid and unenforceable for public use and sale more than one (1)		
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DISTRICT OF CONTROL OF COME DISTRICT OF CONNECTICUT

RAPHAEL J. COSTANZO,

Plaintiff

Vs.

: Civil Action 11864

STANLEY ARRON, ET AL.

Defendants :

NOTICE OF APPEAL

Notice is hereby given that Stanley Arron and Visa Therm Products, Inc., defendants in the above entitled action, hereby appeal to the United States Court of Appeals for the Second Circuit from the final order andjudgment entered in this action on the 9th day of September 1974, reaffirmed by the order entered on October 11, 1974.

"dward F. Kunin,

Attorney for Defendants 285 Golden Hill Street Bridgeport, Conn. 06604 203-335-7393

Dated: November 8, 1974.

UN SD STATES COURT OF APPEALS

CIVIL APPEAL PRE-ARGUMENT STATEMENT (134)	(Attach additional sheets if space is not sufficient)
(To be filed by appoint with Clark of Court of Appoint and served on	APPEAL FROM DISTRICT COURT
other parties within ten days after filing notice of appeal.)	DISTRICT
CASE TITLE (Complete)	DISTRICT COURT
Raphael J. Costanzo,	DOCKET NUMBER CIVIL 11864
Plaintiff, Appellant - Appellee	DISTRICT COURT March 15 1967
Stanley Arron and Visa-Therm Products, Inc.,	APPEAL FILED NOV. 8 1974
Defendants, Appellees-Appellants	RELATED CASE(SIP
	is this a cross appeal 72 70
COUNSEL NAME ADDRESS	TELEPHONE
FOR APPELLANTS: Edward F. Kunin 285 Golden Hill	
Edward F. Kunin 285 Golden Hill Bridgeport, Conn	
	. 06604
FOR APPELLEES:	
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Pairfield, Conn.	06430
(Check One Box Only)	
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